Office-Supreme Court, U.S.
FILED
FEB 23 1981
ALEXANDER L. STEVAS,
CLERK

80-1431

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____
Appellant

On Appeal from the Supreme Court of Missouri

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether, consistent with the First and Fourteenth Amendments, a state may adopt and enforce a court rule listing the exclusive categories of information which are permissible in lawyers' advertisements in the printed media.

2. Whether, consistent with the First and Fourteenth Amendments, a state may discipline a lawyer for including in advertisements the concededly accurate and non-misleading information, not expressly prohibited by rule, that he is licensed to practice in two states, that he is admitted to practice before the Supreme Court of the United States, and that he practices in areas of law such as "personal injury," "contracts," and "securities and bonds," which designations are not among those explicitly approved by the state authorities.

3. Whether a state, consistent with the Commerce Clause, may discipline a lawyer for publishing in a telephone directory which circulates in adjoining states, the truthful information that he is licensed to practice in both states.

4. Whether a state, consistent with the First and Fourteenth Amendments, may discipline a lawyer for mailing a simple announcement of the opening of his office to persons with whom he is not acquainted, on the basis of a court rule limiting the mailing of announcements to "lawyers, clients, former clients, personal friends and relatives."

PARTIES TO THE PROCEEDING

The appellant, R_____ M. J_____ is a lawyer who was disciplined by the court below. The court ordered that his full name not be used in the official reports of the case and not be released to the media. The Clerk has been advised as to his full name and address.

The appellees are members of the Advisory Committee of the Missouri Bar, established by Rule 5 of the Supreme Court of Missouri, who filed an information in that court seeking disbarment of the appellant. They are Harold W. Barrick, Chairman, Owen W. Anglum III, Spencer J. Brown, Lynn M. Ewing Jr., Frank P. Sebree, Fred H. Mayer, Robert C. Smith Jr., and Donald J. Stohr. Wilson Schwenk, one of the informants, died while the case was pending in the court below.

Because the case presents issues of constitutionality of rules of the Missouri Supreme Court, 28 USC Sec. 2403(b) may be applicable and copies of the Notice of Appeal and Jurisdictional Statement have been served on the Honorable John Ashcroft, Attorney General of Missouri, pursuant to this Court's rule 28.4(c.)

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No.

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OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____
Appellant,

On Appeal from the Supreme Court of Missouri

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Court of Missouri, together with the dissenting opinions of Bardgett, Ch. J. and Seiler, J., is reported 609 S.W.2d 411. The case was filed originally in the Supreme Court of Missouri, and there are no other opinions.

JURISDICTION

The opinion of the Supreme Court of Missouri was filed and judgment privately reprimanding the appellant and directing him to pay costs was entered on December 15, 1980. Motion for rehearing (App. 31) was denied on January 5, 1981.

Notice of Appeal to this Court was filed in the Supreme Court of Missouri on January 9, 1981.

This case involves the constitutionality of Rules DR 2-101-(B) and DR 2-102 of Rule 4 of the Supreme Court of Missouri, and the decision of the court below is in favor of the constitutionality. Such rules are considered statutes under 28 USC Sec. 1257(2). See Bates v. Arizona, 433 US 350 (1977); In re Primus, 436 US 412 (1978); Ohralik v. Ohio, 436 US 477 (1978.) This Court, therefore, has jurisdiction under 28 USC Sec. 1257 (2).

CONSTITUTIONAL PROVISIONS AND COURT RULES

Constitution, Article I, Section 8

The Congress shall have power:...To regulate commerce ... among the several states.

First Amendment

Congress shall make no law...abridging the freedom of speech or of the press ... .

DR 2-101-(B), Rule 4, Supreme Court of Missouri

A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication respecting the quality of legal services or containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.

In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish, subject to DR 2-103, the following information in newspapers, periodicals and the yellow pages of telephone directories distributed in the geographic area or areas in which the lawyer resides or maintains offices or in which a substantial part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication complies with DR 2-101(A), and is presented in a dignified manner:

1) Name, including name of law firm and names of professional associates; addresses and telephone numbers;

2) One or more particular areas or fields of law in which the lawyer or law firm practices if authorized by and using designations and definitions authorized for that purpose by The Advisory Committee;

3) Date and place of birth;

4) Schools attended, with dates of graduation and degrees;

5) Foreign language ability;

6) Office hours;

7) Fee for an initial 30-minute consultation;

8) Availability upon request of a schedule of fees;

9) Credit arrangements for payment of fees will be given consideration;

10) The fixed fee to be charged for the following specific routine legal services:

    1. An uncontested dissolution of marriage;

    2. An uncontested adoption;

    3. An uncontested personal bankruptcy;

    4. An uncomplicated change of name;

    5. A simple warranty or quitclaim deed;

    6. A simple deed of trust;

    7. A simple promissory note;

    8. An individual Missouri or federal income tax return;

9. A simple power of attorney;

10. A simple will;

11. Such other services as may be approved by The Advisory Committee; the description of which would not be misunderstood or be deceptive, provided that the statement discloses that the quoted fee will be available only to clients whose matters fall into the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged in print size at least equivalent to the largest print used in setting forth the fee information.

Missouri Bar Advisory Committee Rule

ADDENDUM TO DR2-101(B)(2)

Pursuant to the direction and authority of DR2-101(B)(2) of the Order of the Supreme Court of Missouri entered October 24, 1977, effective January 1, 1978, the Advisory Committee adopts and promulgates the following rules and regulations for advertising by the legal profession in Missouri to be effective simultaneously with the Order of the Supreme Court on January 1, 1978.

* * *

III. Subject to DR2-101(A) and (B), the following areas for fields of law may be advertised by use of the specific language hereinafter set out:

1. "General Civil Practice"

2. "General Criminal Practice"

3. "General Civil and Criminal Practice."

If a lawyer or law firm uses one of the above, no other area can be used except specialties under Paragraph I. If one of the above is *not* used, then a lawyer or law firm can use one or more of the following:

1. "Administrative Law"
2. "Anti-Trust Law"
3. "Appellate Practice"
4. "Bankruptcy"
5. "Commercial Law"
6. "Corporation Law and Business Organizations"
7. "Criminal Law"
8. "Eminent Domain Law"
9. "Environmental Law"
10. "Family Law"
11. "Financial Institution Law"
12. "Insurance Law"
13. "International Law"
14. "Labor Law"
15. "Local Government Law"
16. "Military Law"
17. "Probate and Trust Law"
18. "Property Law"
19. "Public Utility Law"
20. "Taxation Law"

21. "Tort Law"

22. "Trial Practice"

23. "Workers Compensation Law."

No deviation from the above phraseology will be permitted and no statement of limitation of practice can be stated.

If one or more of these specific areas of practice are used in any advertisement, the following statement must be included in the same advertisement in print size at least equivalent to the largest print used in setting forth the areas of practice:

"Listing of the above areas of practice does not indicate any certification of expertise therein."

ADOPTED BY THE ADVISORY COMMITTEE. MISSOURI BAR ADMINISTRATION ON NOVEMBER 13, 1977.

DR 2-102 Of Rule 4 Of The Supreme Court Of Missouri

DR 2-102. Professional Notices, Letterheads and Offices, and Law Lists

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, except that the following may be used if they are in dignified form:

* * *

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but

it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

STATEMENT OF THE CASE

Appellant has been disciplined for violating two rules regarding legal advertising promulgated by Missouri authorities. The first, DR2-101-(B)(2), was construed by the court below as forbidding the mention in advertising of any information not covered by the ten listed categories. Appellant was disciplined for violation of this rule (Counts I, II and IV) because he included in three printed advertisements the accurate information that he is permitted to practice in certain courts, and that he practices in certain areas of law which are described in words other than those explicitly approved by the state authorities.[1] The second rule, DR 2-102-(A)(2), forbids the mailing of announcement cards to persons "other than lawyers, clients, former clients,

---

[1]Counts I and II also complained of the absence of a disclaimer of certification, as required by the Advisory Committee Addendum. As the dissenting opinion of Judge Seiler (app. 7) shows, the advertisements which were the subject of these counts were contracted for before either the amended rule or the Advisory Committee Addendum were published, and before the appellant had notice of the new requirements. The stipulation (app. 23) shows that the appellant tried, unsuccessfully, to withdraw these advertisements after learning of the disclaimer requirement. We submit that, under these circumstances, discipline for failing to include the disclaimer would violate the due process clause of the Fourteenth Amendment, but do not otherwise challenge the disclaimer requirements, which are suggested by the Bates opinion (100 S.Ct l.c. 1 2709). The disclaimer was included in the advertisement which is the subject of Count IV, and in all subsequent advertising. It is manifest that the court below upheld its existing rules in their entirety, and found violation as charged of Count IV as well as of the Counts I and II. It is also clear that the court would hold the advertisement illustrated above, p. 9 to be a violation of its rules.

personal friends and relatives." Appellant was disciplined for violating this rule (Count III) because announcement cards were mailed to two persons who were not personally acquainted with the appellant.

The history of the adoption of the rules in question bears on the issues presented here; consequently we discuss it briefly.

Following the decision of this Court in Bates v. Arizona, 43 US 350 (1977), the Supreme Court of Misosuri amended DR 2-101 of its Rule 4. The amended rule (p. 2, above) was adopted on October 24, 1978, effective January 1, 1978.[2] DR 2-101-(B) listed ten specific categories of information which were approved for lawyers' advertisements in the printed media. The court delegated to the Advisory Committee, established by its Rule 5, the authority to specify "designations and definitions" of "particular areas of the law in which the lawyer practices."

On November 18, 1977 the Advisory Committee published an Addendum to DR 2-101(B)(2), page 4 above. This addendum listed 23 "fields" or "areas" of law. There was no accompanying report or other explanation as to why certain areas and phrasings were chosen and others omitted. The Addendum contained a statement as follows:

> "No deviation from the above phraseology will be permitted and no statement of limitation of practice can be stated."

The Missouri Supreme Court made no change in its DR 2-102(A)(2), page 6 above, which dealt with the mailing of announcements and permitted such mailing only to "lawyers, clients, former clients, personal friends and relatives. ..."

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[2]The Missouri Supreme Court substantially approved the recommendations of its Standing Committee on Professional Ethics and Responsibility, referred to in the opinion below (App. 1). That Committee's report, in the form of a transmittal letter, is included as Appendix 23.

The appellant was admitted to the bar in Missouri and in Illinois in 1973. After some years with the Securities and Exchange Commission, he opened an office as a sole practitioner in Clayton, a metropolitan suburb of St. Louis, Missouri and county seat of St. Louis County. In connection with the opening of this office, and after Bates was decided, he mailed some "tombstone" announcements. It was stipulated (App. 25) that some of these were mailed by his wife, using a roster of a charitable organization to which she belonged for addresses, and that she mailed two announcements to a couple who were not personally acquainted with the appellant. The announcement which is the subject of Count III of the information, read as follows:

R_____ M. J_____
Formerly with the United States
Securities and Exchange Commission

IS PLEASED TO ANNOUNCE THE OPENING OF HIS OFFICE FOR THE GENERAL PRACTICE OF LAW

Suite 1404
Chromalloy Plaza

SAINT LOUIS (CLAYTON) MISSOURI 63105

(314) 862-4321

Twice in 1978 the appellant placed advertisements in the Yellow Pages, and once he placed a newspaper advertisement. These form the basis for Counts I, II and IV. The advertisement declared on in Count IV is fairly typical of the three advertisements, and demonstrates the kind of advertising the appellant proposes to use in the future. It was published in the St. Louis telephone directory, which circulates in Missouri and Illinois, and read as follows:

J_____, R_____ M.

.Corporate
.Partnership
.Real Estate
.Tax
.Bankruptcy
.Probate
.Contract
.Anti-Trust
Labor
.Criminal
.Aviation
.Securities - Bonds
.Personal Injury
.Trials & Appeals
.Wills, Estate Planning
.Pension & Profit Sharing Plans
Workmen's Compensation
.Divorce, Separation
.Custody, Adoption
.Zoning & Land Use
.Entertainment/Sports
.Food, Drug and Cosmetic
.Communication

(Listing of the Above Areas Does Not Indicate Certification Therein)

Admitted to Practice Before
THE UNITED STATES
SUPREME COURT

Licensed in: MISSOURI & ILLINOIS

120 South Central 721-2000

* * *

It was stipulated that the areas of law listed in this advertisement are among the areas listed by the American Bar Association in its compilation of "fields of law," and that the advertisement was in compliance with Illinois rules. (App. 25-26)

On November 19, 1979 the Advisory Committee, which is the authorized prosecution authority for disciplinary actions against Missouri lawyers, filed an original information in four

counts in the Supreme Court of Missouri.[1] Counts I, II and IV of the information charged that the printed advertisements as described above violated the new DR 2-101-(B) of Rule 4 of the Supreme Court of Missouri in that each advertisement "lists the courts in which (appellant) is admitted to practice, lists areas of law not admitted for advertising purposes." Count III charged that appellant caused announcements to be

> "sent to persons other than lawyers, clients, former clients personal friends and relatives, contrary to DR 2-102-(A)(2), Rule 4, of the Supreme Court of Missouri. ..."

No claim was made that the text of the announcements so mailed contained impermissible matter.

No claim was made in any count that the advertising matter contained any statement or claim

> "...respecting the quality of legal services or containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim. ...",

so as to violate DR 2-101-(A).

The information concluded with the prayer that the lawyer

> "...be disbarred, that his right and license to practice law in this state be cancelled and terminated, and that his name be stricken from the roll of attorneys in this state, or such other discipline as the Court deems appropriate in the premises".

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[1]The Advisory Committee is an accusatory body and not a tribunal. By Rule 5, nevertheless, it is obliged to afford accused attorneys a closed hearing. The appellant appeared at such a hearing accompanied by present counsel and sought to persuade the Advisory Committee that it should not file an information, asserting the constitutional arguments here advanced. The Advisory Committee nevertheless found probable cause, and filed an information seeking disbarment. The finding of probable cause is not an adjudication, and no opinion was authorized or issued.

The constitutional issues here relied on were placed directly in issue in the return. (App. 19) Paragraph (f) of the return to Count I charged that the rules in question violated the freedom of speech provisions of the First and Fourteenth Amendments. This paragraph was incorporated by reference in the return to Counts II and IV. The return to Count III charged that a rule limiting the mailing of announcements to persons in certain categories violated the same constitutional provisions. Paragraph (c) of the Return to Count IV claimed that, under the Commerce Clause of Article I, Section 8, the appellant had the right to advertise his admission to practice in Illinois in a bi-state telephone directory.

The case was presented to the Supreme Court of Missouri by means of a stipulation (App. 23) No testimony other than testimony set out in the stipulation was presented.

In an opinion handed down December 15, 1980, (App. 1) the Supreme Court of Missouri sustained the charges contained in the information and upheld the constitutional validity of all challenged rules, saying:

> "...On October 24, 1977 there was every reason to believe that the good-faith efforts made by the Committee and this court to follow *Bates and O'Steen supra,* would pass constitutional muster. ...
>
> "We are urged now by (appellant) to follow the *Central Hudson* model. We respectfully decline to enter the thicket of attempting to anticipate and to satisfy the *subjective ad hoc* judgments of a majority of the justices of the United States Supreme Court. ..."

In reaching the conclusion it did the court below necessarily rejected the appellant's constitutional challenges to the rules in question and found that the allegations of all four counts were established. The opinion of the majority is cryptic, but the two dissenting opinions clearly show that the constitutional issues

were considered by the court and rejected by the majority. The dissenting opinions discuss the Central Hudson case, which the majority refused to analyze.

A motion for rehearing seeking delineation of the court's precise holdings (App. 31) was summarily denied. The judgment was stayed pending proceedings in this Court.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1. The First Amendment Does Not Permit A Scheme Of Regulation Of Legal Advertising Which Specifies The Sole And Exclusive Items Which May Be Included In Advertisements And Forbids The Publication Of Any Other Items, Even Though Purely Factual And Not "False, Deceptive Or Misleading."

Missouri's DR 2-101-(B) is drafted on the theory that a state may adopt a rule specifying the only items which may be used in lawyers' advertisements, and that lawyers may be disciplined for including any other information. This appellant was disciplined for stating that he was "Licensed in Missouri and Illinois" and "Admitted to Practice before the United States Supreme Court," even though no provision of the governing rules prohibited the making of such statements. He was also reprimanded for listing "personal injury" among the fields of law practiced, when the approved phrasing called for the legalistic designation "tort law," (Later changed by the Advisory Committee to "negligence law.") He was disciplined for saying that he handled "contract" matters, and, in spite of his S.E.C. experience, "securities and bonds," because those fields of law were not listed in the Advisory Committee Addendum authorized by the rule.

Missouri's rules, construed as the court below construed them, do not afford lawyers the First Amendment protection guaranteed by Bates, the holding of which was not confined to the propriety of advertising the charges for routine legal services. This Court expressly held that Messrs, Bates and O'Steen could use the term "legal clinic" and could state that they charged "very reasonable fees." The appellant's expressions challenged in this case are essentially similar. They concededly are not "false, deceptive or misleading," and therefore constitute protected speech. The Missouri rules in question, indeed, would forbid the publication of the Bates advertisement,

because it contains matters not explicitly authorized by the local rules.

The invalidity of a plan such as Missouri's is conclusively demonstrated by Central Hudson Gas and Electric Corporation v. Public Service Commission, US, 100 S. Ct. 2343 (1980), which approved the statement of In re Primus, 436 U.S. 412, (1978), that restrictions on commercial speech must be "narrowly drawn." Under the reasoning of Primus and Central Hudson a limitation of advertising to specific items, with a general prohibition of all others, would be manifestly invalid. The court below did not attempt to harmonize its rules with Central Hudson but, to our astonishment, expressly refused to analyze that opinion or to follow it.

Missouri's DR 2-101-(B), applied to the appellant, is flatly invalid under the four-part test of Central Hudson. The information in the advertisements concerns lawful activity and is not misleading. It is therefore "protected speech." Granting that there is a substantial government interest in protecting the public against false or misleading advertising by lawyers, and that a scheme such as Missouri's might be convenient from the standpoint of the regulatory authorities, the Missouri rule utterly and flagrantly fails the fourth part of the Central Hudson test because it is far "more extensive than is necessary to serve (the substantial governmental) interest." This barn-burning rule goes far beyond the necessities of effective and proper regulation in forbidding the appellant to state that he is licensed in both states, or that he practices in such areas as "securities," in which he has special experience, and in prohibiting him from including the other challenged information, with no intimation that this information is false or misleading, for the sole reason that the information is not expressly authorized by the rule.[4] Central Hudson was decided in order to preclude regulation of commercial speech in the manner here attempted.

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[4]The Advisory Committee Addendum does not limit the number of approved "fields" or "areas" of law which a lawyer may include in an advertisement. Nor does it require any experience at all in the areas the lawyer chooses to list.

Hudson was decided in order to preclude regulation of commercial speech in the manner here attempted.

There is no sound basis for any argument that Central Hudson does not apply to lawyers' advertisements. The prominent citation of Bates and Primus shows that this Court was trying to formulate guidelines for all commercial speech, including legal advertising.

The issue before the Court is of great importance. If the judgment below stands the lawyer will be unable to publish advertisements of the kind he has used in the past, even though he has the constitutional right to do so. Missouri will be able to restrict the dissemination of truthful and helpful information about lawyers, by perpetuing regulation which seeks to prohibit any advertising at all of items which are not expressly approved. Some other states have rules similar to Missouri's[5] and others will be encouraged to adopt rules of this kind, unless this Court acts.

2. There Is No Constitutional Basis For Distinguishing Between Mail Advertising And Advertising In The Printed Media.

The appellant has been disciplined for mailing tombstone announcements to persons not acquainted with him. The court below makes no attempt at justifying a regulation of this kind. DR 2-102-(A)(2) is flatly in conflict with the Central Hudson principle, in prohibiting all mailed advertising to members of the public who are not within the categories listed in the rule. The regulation goes far beyond any legitimate governmental purpose.

The court below offered no reason as to why an advertisement which could be printed in the newspaper could not be mailed to members of the public, by one who is willing to pay the postage. Two state courts of last resort have held that a lawyer has the same constitutional right to mail an advertise-

---

[5]See Durham v. Brock, 498 F. Supp. 213 (DC MD Tenn, 1980.)

ment that he has to publish it in a printed medium. Kentucky State Bar Association v. Stuart, 568 SW 2d. 933, (Ky. S. Ct., 1978); Koffler v. Joint Bar Association, 51 NY 2d 140, 412 NE 2d 927 (1980), reversing 420 NYS 2d. 560, (App. Div. 1979.)

The appelless conceded in their brief in the court below that the announcements in this case were not mailed to persons who were known to have pending legal business, and that there was no "solicitation."

The Missouri rules cannot be justified as a regulation of the "media" in which lawyers' advertisements might appear. This Court in Bates referred to regulation of media of advertising, but it is clear from context that the Court had the special problems of the electronic media in mind. (97 S.Ct. l.c. 2709) No special reason has been offered as to why restrictions on mailed advertisements are appropriate or necessary. The blanket prohibition of mailings except to certain addressees must necessarily fail under the holdings of Primus and Central Hudson,

3. The Missouri Supreme Court Has Failed To Perform Its Plain Constitutional Duty Under Article VI Of The Constitution Of The United States.

The substantiality of the federal questions is highlighted by the egregious behavior of the court below in saying that it would "respectfully decline" to apply the Central Hudson test to its rules on advertising. The court below absolutely refused to do the screening which is its plain duty. This Court must insist on adherence to its controlling decisions. Bates, Primus and Central Hudson represent a continuum designed to provide guidelines for the regulation of commercial speech. Unless this Court acts the decisions designed to provide First Amendment protection for commercial speech will be set at nought, and the states will be able to erode constitutional protections by adopting rules on the Missouri model.

4. The Case Is Appropriate For Summary Reversal.

This Court's Rule 15(h) directs us to "include reasons why the questions presented are so substantial as to require plenary consideration, with briefs and oral argument, for their resolution." For the reasons set out above, the decision should not be allowed to stand without plenary consideration by this Court. Quite the contrary; this is a case in which summary reversal would be appropriate. The decision of the court below is flatly in conflict with Bates and Central Hudson, in disciplining the appellant for plain, truthful advertising which is not claimed or shown to be false or misleading. No new constitutional problems are involved.

CONCLUSION

The Court should accept jurisdiction and either hear the case on the merits or summarily reverse.

Respectfully submitted,

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APPENDIX

APPENDIX A

Opinion Below

Supreme Court of Missouri
en banc
December 15, 1981
No. 61894

In The Matter of: R ____ M. J ____,
Respondent.

This is a disbarment proceeding wherein respondent questions the constitutionality of DR 2-101 of Rule 4 of this Court.

On June 25, 1974, this Court entered an Order appointing a Select Committee on Professional Ethics and Responsibility and charged it with the duty of reviewing Rule 4 of this Court and making such recommendations for revisions as deemed appropriate. The members of the Committee were: Robert L. Hawkins, Jr., Cole County, Chairman; James Ruddy, St. Louis County; David E. Blanton, Scott County; Meredith B. Turner, Greene County; Forrest M. Hemker, St. Louis City; R. Leroy Miller, Grundy County; Bertram W. Tremayne, Jr., St. Louis County; Martin J. Purcell, Jackson County; Donald L. Mason, Jackson County; and J. Andy Zenge, Jr., Lewis County.

On June 27, 1977, in Bates and O'Steen v. State Bar of Arizona, 433 U.S. 350 (1977), the Supreme Court of the United States posited a confrontation between the traditional concern for attorney professionalism and the public need to know of the availability, nature and price of legal services and came down on the consumer side under the aegis of protecting attorneys' rights to free flow of commercial speech.

On September 9, 1977, the Hawkins Committee submitted a report to this Court which sought to implement the teachings of *Bates and O'Steen, supra.* On October 24, 1977, this Court pro-

mulgated DR 2-101, a copy of which is appended to this opinion. The effective date of DR 2-101 was January 1, 1978. It can truthfully be stated that a constitutional study in depth was made before DR 2-101 was adopted. On Octoaber 24, 1977, there was every reason to believe that the good-faith efforts made by the Committee and this Court to follow *Bates and O'Steen, supra,* would pass constitutional muster.

However, on June 20, 1980, in Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, ____ U.S. ____ (1980), a case in which commercial speech was at issue, the Supreme Court of the United States constructed a model:

> "Writing for the majority, Justice Lewis F. Powell Jr. delineated a four-part analysis to determine the constitutionality of government clamps on commercial speech. To come within the ambit of the First Amendment, Justice Powell explained, commercial speech must concern lawful activity and not be misleading. Once this demonstration is made, commercial speech may be restrained only if the government proves both that the restraints directly advance a substantial government interest and are not more extensive than necessary to serve that interest."

Fein, *Free Speech in Ads Wins Key Plug From Brethren,* The National Law Journal, Nov. 17, 1980, at 15, col. 1.

We are urged now by respondent to follow the *Central Hudson* model. We respectfully decline to enter the thicket of attempting to anticipate and to satisfy the *subjective ad hoc* judgments of a majority of the justices of the United States Supreme Court. *See* Shapiro v. Thompson, 394 U.S. 618 (1969) (the compelling state interest test); and Godfrey v. Georgia ____ U.S. ____ (1980) (the imposition of the death penalty).

We recognize respondent's right to press on in the courts authorized by Article III of the United States Constitution. If he

exercises that right and obtains a favorable result there, we can *then* decide whether we will honor our duty to exercise "superintending control over all courts" in Missouri (Mo. Const. art. V, § 4) or will order DR 2-101 excised from Rule 4 of this Court.

We are aware, of course, that this is a "test" case and that respondent's violation of Missouri's Code of Professional Responsibility is minimal.

Respondent is ordered to pay the costs herein and is privately reprimanded. In re Sullivan, 494 S.W.2d 329, 334 (Mo. banc 1973).

Robert T. Donnelly, Judge

Rendlen, Welliver, Morgan and Higgins, JJ, concur; Bardgett, C.J., dissents in separate dissenting opinion filed; Seiler, J., dissents in separate dissenting opinion filed.

Appendix to Opinion

DR 2-101 - Publicity

(For DR 2-101(A) & (B), See p. 2, above)

* * *

(C) If a lawyer advertises a fee for a service, the lawyer must render that service for no more than the fee advertised.

(D) Unless otherwise specified in the advertisement if a lawyer publishes any fee information authorized under DR 2-101(B) in a publication that is published more frequently than one time per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after

such publication. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication that is published once a month or less frequently, he shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication which has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication but in no event less than one year.

(E) This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when his professional status is germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(F) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

DISSENTING OPINION

I respectfully dissent and would dismiss the information. The work in 1977 of the committee referred to in the principal opinion was and is much appreciated. The question of what may be done in the regulation of lawyer advertising without offending the First Amendment of the United States Constitution or its counterpart in the Missouri Constitution is still unclear. Of course, unrestrained lawyer advertising can be a trap to snare the unwary. Yet, the public has an interest in knowing whether a lawyer practices in a particular field, what courts he practices in, and the cost of services. And the lawyer has a first-amendment right to so inform the public. It seems to me that is essentially what Bates and O'Steen v. Arizona, 433 U.S. 350 (1977), holds, and it was the holding in that case that we sought to satisfy in our modification of DR 2-101 of Rule 4, including the authorization to the committee to draw up the addendum referred to in Judge Seiler's dissent. That addendum was a sort of "menu" which required the use of certain words, *e.g.*, "tort law", to describe certain fields of practice. The committee and the Court were trying to be helpful by assuring the lawyer that if he used those descriptions his advertisement would be permissible. But, if advertising a practice in a given field of law *is* permissible then can we say that the state has a significant interest in requiring the use of the words "tort law" but not the words "personal injury"? In my opinion, we cannot support such a conclusion with reason. It was, perhaps, a mistake to seemingly require strict adherence to the boiler plate language of the addendum, but it can be used as a guide. I cannot, therefore, join in an opinion which would continue to maintain the addendum as the sole and only words permitted to describe a field of practice in an advertisement. The same is true of the term "contracts" used in respondent's advertisement. The word "contract" is in common usage and means something to nonlawyers. I can find no synonyms for it in the addendum; yet, in general parlance, "contract" or "contract law" describes an area of practice in an understandable way to nonlawyers.

In approving DR 2-101 and the addendum, we were, in a sense, construing the First Amendment as articulated in Bates and O'Steen, *supra*, The adoption of a rule does not involve the adjudication of a case or controversy, and consequently we did not have the full benefit of adversarial briefs and argument as we do in cases here for adjudication and as we now have in this case. We should recognize that in those circumstances we can more readily err and be too restrictive. In my opinion, that is what happened here and this is our opportunity to correct the error. I would hold that respondent was not guilty of unethical conduct in using the terminology of "Personal Injury", "Workmen's Compensation", and "Contracts". I would further hold the addendum shall be considered as a guide and that no unethical conduct is committed if the terminology used to describe a field of practice is reasonable and fairly describes to a nonlawyer the field of law spoken of in the advertisement.

I find no unethical conduct involved in respondent stating he is admitted to practice in Missouri and Illinois and the United States Supreme Court as it seems to me the reader benefits from knowing the courts in which he is admitted to practice and there is no identifiable state interest served in prohibiting an attorney from so informing the public. I disagree with Judge Seiler's subjective view of the ad regarding respondent's right to practice in the United States Supreme Court. I would hold a lawyer may state the states or courts to which he has been admitted to practice. Nor do I think the mailing of essentially the same material constitute unethical conduct.

I do not, however, regard Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, ____ U.S. ____, 100 S.Ct. 2343 (1980), as applicable, in its entirety, to advertising by lawyers. I believe we should continue to exercise responsibility to the public in regulating the practice of law and this includes advertising. But I also believe we must do so reasonably and be willing to recognize errors we may make in

rules and correct them whenever the opportunity to do so presents itself.

For these reasons I would dismiss the information.

JOHN E. BARDGETT, Chief Justice.

DISSENTING OPINION

I respectfully dissent. I would dismiss the information. In explaining why, it is first necessary to set out certain facts. The Advisory Committee's information of November 19, 1979 contains four counts. Count I alleges that respondent placed an advertisement in the January/February 1978 issue of a neighborhood newspaper which advertisement did not comply with DR 2-101(B), in that it listed the courts [sic] in which respondent was admitted to practice, listed areas of law the advertising of which had not been approved, and did not contain a statement disclaiming certification of expertise in said areas. Count II contains the same allegations except that the advertisement was placed in the February 1978 St. Louis Suburban West telephone directory Yellow Pages. Count III alleges that respondent allowed professional announcement cards, announcing the opening of respondent's office, to be sent to persons other than lawyers, clients, former clients, personal friends and relatives, contrary to DR 2-102(A)(2). Count IV contains the same allegations as Counts I and II except that the advertisement was placed in the August 1978 St. Louis Yellow Pages and did contain a disclaimer.

The specific items in respondent's ads which are at issue are that he listed that he was admitted to practice before the United States Supreme Court and that he listed fields of law by using titles differing from the specific titles approved by the Advisory Committee, as, for example, "Personal Injury" instead of the

approved title "Tort Law", "Workmen's Compensation" instead of the approved title "Workers Compensation Law" and "Contracts" where no such area of law is approved for advertising.

A list of the approved areas of law and terminology therefor is not found in DR 2-101. It appears in the Advisory Committee's addendum to DR 2-101(B)(2), published only in the January-February 1978 Journal of the Missouri Bar at page 51. The addendum lists twenty-three areas of law which can be used in advertisements and adds that "No deviation from the above phraseology will be permitted . . . ." It specifies that the following disclaimer be included in the advertisement: "Listing of the above areas of practice does not indicate any certification of expertise therein."

First, with regard to respondent's failure to include such a disclaimer as alleged in Counts I and II, the addendum which required it was adopted by the Advisory Committee on November 18, 1977. Respondent was sent a copy by the Advisory Committee on December 19, 1977. This was the first time that respondent could have been aware of the addendum, because it was not published until the January-February 1978 issue of the Journal of the Missouri Bar.[1] When respondent received the copy of the addendum, he telephoned the publishers with whom he had placed the advertisements for the purpose of modifying them to comply with the addendum, but in each case was told that no change could be made in that the publication process had gone too far. Respondent's later advertisement contained the disclaimer and I would therefore dismiss those parts of Counts I and II that relate to the disclaimer.

---

[1] In our order of October 24, 1977, which amended the disciplinary rules as to advertising, effective January 1, 1978, we authorized the Advisory Committee to establish designations and definitions of particular areas or fields of law as to which a lawyer could advertise. Those attorneys who did not look at or receive the January-February

Second, with regard to respondent's listing that he is admitted to practice before the United States Supreme Court, I have my doubts as to its propriety and I am skeptical as to the reasons for its inclusion. Respondent made no mention of any other court in his advertisements. The United States Supreme Court is the highest and best known court in the land. It also is the court least likely to be involved in the law business of the average client. Although the fact of being admitted to the Supreme Court might impress a person looking for a lawyer, the question arises: does such information really help the consumer in obtaining needed legal services or is it more a device to seize his attention and to convey the idea that one who is admitted to the United States Supreme Court is per se a better lawyer? Suppose a lawyer made such information the centerpiece of his advertisement, displaying it even more prominently than respondent has in the advertisements before us? I doubt that informational value gained by the consumer by advertising the isolated fact of admission to the United States Supreme Court justifies the risk of the false impression that such advertising may convey. I do not think that such a listing should be permitted, but I do not believe respondent's actions warrant discipline in this particular case in which the lawyer is trying to obtain a ruling on what he can and cannot do.

Third, with regard to the other charges, I do not believe we can constitutionally prohibit lawyers from listing areas of law using the term "Personal Injury" instead of the approved ter-

---

1978 issue of the Journal of the Missouri Bar may not be aware of the existence of the addendum since it does not appear anywhere else, either in the Supreme Court Rules or in any statutory compilation. We have looked at the 1980 Yellow Pages in the telephone directories for both Kansas City and St. Louis and observe that numerous advertisements seem to be in violation of the addendum. This indicates to me that many lawyers are not aware of the addendum, as I do not believe that so many lawyers would knowingly want to publish advertisements which are out of compliance therewith.

minology "Tort Law" or the like as to other titles or from listing areas of law not covered in the addendum such as "Contracts." There is no need to be so restrictive. It is self-evident that "Personal Injury" is much more understandable to a layman than "Tort Law" and that listing "Contracts" might be helpful information to a prospective consumer. The same can be said as to other examples. Nor do I believe we can constitutionally prohibit lawyers from using first class mail to send out the same information that they could put in a newspaper advertisement. *See* In the Matter of Alfred S. Koffler, No. 433 (N.Y. Ct.App. Oct. 21, 1980).

Although Bates and O'Steen v. Arizona, 433 U.S. 350.383 (1977) does not specifically speak to the above situations, the United States Supreme Court did find that limiting commercial speech which 1) is false, deceptive, or misleading; 2) makes claims as to the quality of service; 3) involves in person solicitation; or 4) concerns illegal activities, was "clearly permissible." None of the above factors is present with regard to listing areas of law or sending announcement cards to strangers through the first class mail.

More recently, in Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, ____ U.S. ____ 100 S.Ct. 2343, 2351 (1980), the Court stated:

> "In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest."

The above cases cast serious doubt on the constitutionality of the restrictions sought to be enforced against respondent, and, in my judgment, there is even more doubt under the free speech clause of the Missouri Constitution, art. I, § 8, which, as I have submitted on other occasions, is broader and gives greater freedom of speech to the individual than its federal counterpart.

As stated earlier, I would dismiss the information.

Robert E. Seiler, Judge

APPENDIX B

Judgment Below

SUPREME COURT OF MISSOURI
en banc
December 15, 1980

OPINION BY DONNELLY, J.

61894 In the Matter of: R_____ M. J_____, Respondent.

RESPONDENT ORDERED TO PAY COSTS HEREIN AND IS PRIVATELY REPRIMANDED. Rendlen, Welliver, Morgan, and Higgins, JJ., concur; Bardgett, C.J., dissents in separate dissenting opinion filed; Seiler, J., dissents in separate dissenting opinion filed.

APPENDIX C

Ruling On Motion for Rehearing

SUPREME COURT OF MISSOURI
January 5, 1981
No. 61894

"Respondent's motion for rehearing overruled."

"Respondent's motion to stay sustained."

APPENDIX D

Notice Of Appeal

IN THE SUPREME COURT OF MISSOURI

No. 61894

In the Matter of R_____ M. J_____

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES
(Filed January 9, 1981)

Notice is hereby given that R_____ M. J_____, the appellant above named, hereby appeals to the Supreme Court of the United States from the final jdugment of the Supreme Court of Missouri entered herein December 15, 1980, reprimanding the appellant and ordering to pay the costs of a disciplinary proceeding.

This appeal is taken pursuant to 18 USC Sec. 1257(2).

/s/ CHARLES B. BLACKMAR
7305 Maryland
St. Louis, Missouri 63130
(314) 725-8143

/s/ CHARLES A. BLACKMAR
Suite 1200, 1100 Main Street
Kansas City, Missouri 64112
(816) 221-6758

Attorneys for Appellant

I certify that I mailed a copy of the above Notice of Appeal to John W. Inglish, 309 North High Street, California, Missouri 65018, Attorney for all appellees, and to The Honorable John Ashcroft, Attorney General of Missouri, Supreme Court Building, Jefferson City, Missouri 65101, this 7th day of January, 1981.

CHARLES B. BLACKMAR
Attorney for Appellant

APPENDIX E

Information (Filed November 19, 1979)

(Caption omitted)

INFORMATION

Comes now Harold W. Barrick, General Chairman of the Advisory Committee, and informs the Court as follows:

1. That Harold W. Barrick, Owen W. Anglum, III, Spencer J. Brown, Lynn M. Ewing, Jr., Frank P. Sebree, Fred H. Mayer, Wilson Schwenk, Robert C. Smith, Jr., and Donald J. Stohr, are the duly appointed, qualified and acting members of the Advisory Committee, created by Rule 5 of the Supreme Court of Missouri.

2. That Richard M. Jacobs, hereinafter referred to as the Respondent, is now and was at all times herein mentioned a duly licensed attorney at law, admitted to practice law in and before all of the courts of this state, is a member of the Bar of the State of Missouri, and now maintains a law office and engages in the practice of law in Clayton, St. Louis County, Missouri.

3. That Respondent, while engaged in the practice of law in the State of Missouri in Clayton, St. Louis County, and in the vicinity thereof, did wrongfully, unethically and unprofessionally, and in violation of his duties as a lawyer, engage in and be guilty of the following acts of professional misconduct hereinafter set forth particularly, to wit:

Count I

That Respondent did cause an advertisement to be placed in the January/February 1978 issue of the West End Word, a newspaper printed and distributed in the western part of St. Louis County, Missouri, said advertisement being for Respon-

dent's law office., which did not comply with the provisions of the Order of the Supreme Court of Missouri dated October 24, 1977, concerning lawyer advertising and the Addendum thereto adopted by the Advisory Committee on November 18, 1977, in that said advertisements: lists the Courts in which Respondent is admitted to practice: lists areas of law not approved for advertising purposes: and further fails to include the required statement disclaiming certification of expertise in said areas, all contrary to DR2-101(E), Rule 4, Supreme Court of Missouri.

Count II

That Respondent did cause an advertisement to be placed in the yellow pages of the Southwestern Bell Telephone Company telephone directory for the St. Louis Suburban West issued in February 1978, said advertisement being for Respondent's law office, which did not comply with the provisions of the Order of the Supreme Court of Missouri dated October 24, 1977 concerning lawyer advertising and the Addendum thereto adopted by the Advisory Committee on November 18, 1977, in that, said advertisement lists the Courts in which Respondent is admitted to practice; lists areas of law not approved for advertising purposes; and further fails to include the required statement disclaiming certification of expertise in said areas, all contrary to DR2-101(B), Rule 4, Supreme Court of Missouri.

Count III

That Respondent did allow professional announcement cards, announcing the opening of Respondent's office, to be sent to persons other than lawyers, clients, former clients, personal friends, and relatives, contrary to DR2-102(A)(2), Rule 4, Supreme Court of Missouri.

Count IV

That Respondent did cause an advertisement to be placed in the yellow pages of the Southwestern Bell Telephone Company telephone directory for August of 1978, said advertisement being for Respondent's law office, which did not comply with the provisions of the Order of the Supreme Court of Missouri dated October 24, 1977 concerning lawyer advertising and the Addendum thereto adopted by the Advisory Committee on November 18, 1977, in that said advertisement lists the Courts in which Respondent is admitted to practice and lists areas of law which are not approved for advertising purposes, contrary to DR2-101(B), Rule 4, Supreme Court of Missouri.

WHEREFORE, the Advisory Committee respectfully requests the Court to hear the evidence relating to said charges and after due hearing, to find that said charges are true and in violation of the Disciplinary Rules herein stated, and that the Court enter its judgment finding Respondent guilty of said charges, and ordering that the said Richard M. Jacobs be disbarred, that his right and license to practice law in this state be cancelled and terminated, and that his name be stricken from the roll of attorneys in this state, or such other discipline as the Court deems appropriate in the premises.

The ADVISORY COMMITTEE of the
MISSOURI BAR ADMINISTRATION

/s/ Harold W. Barrick
General Chairman

APPENDIX F

Return To Information

The Respondent, for his return to the Information filed herein, waives service of process and enters his general appearance in the case. Respondent expresses his willingness to submit the case directly to the court on the pleadings and on the record made before the Advisory Committee.

The Respondent states that at all times material to this proceeding, he has been a lawyer duly licensed and qualified to practice in the State of Illinois as well in the State of Missouri.

Count I

a. Respondent admits that an advertisement for his law office appeared in the January-February 1978 issue of West End Word;

b. That said advertisement was arranged for before the issuance of the Supreme Court Order and Advisory Committee Memorandum as set out in the Information, and was published after December 31, 1977 through no fault of Respondent but by reason of an error on the part of the publisher;

c. The said advertisement at the time it was arranged did not violate any valid statute or rule, and that the respondent had the right to publish it under the Constitution of the United States, Amendments I and XIV, and that any statute or rule then in effect which limited his right so to publish was unconstitutional and in violation of the said constitutional provisions;

d. That respondent had no actual notice of any change in the rules of this court, or of the Advisory Committee memorandum until receipt of the General Chairman's letter of December 19, 1977.

e. Respondent does not challenge the disclaimer as specified in Supreme Court Rule 4, DR 2(101)(B), and has made such use

of the disclaimer, and proposes to make use of this disclaimer in any future advertising, but states that the only reason it was not included in the West End Word advertisement was that the advertisement was arranged before the disclaimer rule was published;

f. Respondent under the First and Fourteenth Amendments to the Constitution of the United States has the constitutional right to publish an advertisement setting forth the fields of law practiced in meaningful and understandable language to the layman, without restriction as required by the wording of the Advisory Committee Memorandum, and also has the constitutional right to list in an advertisement the courts before which he is licensed to practice; that the Supreme Court Order (DR 2-101[B]) and Advisory Committee memorandum are unconstitutional and violate the First and Fourteenth Amendments to the Constitution of the United States to the extent that they deprive respondent and others in his position of the right to do so.

* * *

i. For all of the reasons alleged in paragraphs "b" through "h" above, Count I of the Information fails to state valid grounds for disciplinary action.

Count II

Respondent admits that he caused an advertisement to be placed in the Suburban West Telephone Directory as set out in Count II of the Information but states that the said advertisement was arranged before the publication of the Supreme Court Order and Disciplinary Rule as set out in the Notice, and adopts the provisions of paragraphs: c, d, e, f, g and h of Count I of this return and incorporates them herein by reference.

Count III

Respondent denies the allegations of Count III of the Information. Further responding, respondent states that he has the constitutional right to distribute an announcement containing the material set out in Count III of the Information to any persons he chooses, without restriction to lawyers, clients, former clients, personal friends and relatives, under the First and Fourteenth Amendments to the Constitution of the United States, and that DR 2-102(a)(2), Rule 4, Supreme Court of Missouri, is unconstitutional to the extent that it purports to limit this right.

* * *

Count IV

a. Respondent admits that he caused an advertisement to be placed in the Yellow Pages of the Southwestern Bell Telephone Directory for Greater St. Louis; published in August of 1978;

b. Adopts the provisions of paragraphs c, e, f, g and h of the return to Count I as part of this return to Count IV, and states that the provisions of the Supreme Court Order and Advisory Committee Memorandum are unconstitutional and the Advisory Committee Memorandum is in violation of Article V, Sections V of the Constitution of the State of Missouri for the reasons there assigned to the extent that they purport to prevent the publication of the contents of the said advertisement;

c. States that he is licensed to practice in the State of Illinois, that the said telephone directory circulates in the State of Illinois, that the advertisement is in accord with the laws of Illinois and governing Rules of the Supreme Court of Illinois, and that any attempt by the State of Missouri or its agencies to restrict its publication would constitute an unconstitutional

burden on interstate commerce, in violation of the provisions of Article I, Section 8, of the Constitutional of the United States.

WHEREFORE, Having fully made return, Respondent prays that all proceedings against him be terminated and that he recover his costs herein expended.

APPENDIX G

STIPULATION

(Exhibits Omitted)

The following matters are stipulated between the parties for purposes of this action, each party reserving the right to object to relevancy or materiality:

1. The respondent, Richard Jacobs, graduated from law school in 1973 in Illinois, and, in the same year, was admitted to the bars of both Missouri and Illinois. He practiced in Illinois for several months before being employed by the United States Securities and Exchange Commission and later received an appointment to the Presidential Clemency Board.

2. In August of 1976 the respondent moved to St. Louis from Washington, D.C. In April of 1977 he leased a law office in Clayton, Missouri and began the practice of law as a sole practitioner at that office.

3. Following the decision of the Supreme Court of the United States in *Bates and O'Steen* v. *Arizona,* 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (June 27, 1977), the grievant caused advertisements to be placed in several suburban newspapers in the St. Louis area. These advertisements are not the subject of any pending count of the Information.

4. On October 24, 1977, the Supreme Court of Missouri entered an order amending DR 2-101 of Rule 4, with the amendment to be effective January 1, 1978. Notice of the Order of October 24, 1977 was published in the Journal of the Missouri Bar for December, 1977.

* * *

6. In October of 1977 the respondent entered into a contract for the publication of an advertisement in the West End Word, a newspaper published in St. Louis, Missouri. The last adver-

tisement pursuant to the contract was to run in the December 1977 issue. The advertisement was published in November 1977 and, through an oversight of the publisher and through no fault of the respondent, was omitted in December 1977 but then published in January 1978. The advertisement, Exhibit 2, is the subject of Count I of the Information.

7. The respondent has not made use of newspaper advertising following the appearance of the West End Word advertisement.

8. On November 3, 1977 the respondent signed a contract for advertising in the Yellow Pages for the St. Louis Suburban West Telephone Directory, (Exhibit 3). The advertisement, which appeared in the February 1978 issue of the directory, is set out in Exhibit 4 and is the subject matter of Count II of the Information.

* * *

11. The Advisory Committee Addendum was adopted November 16, 1977 and became effective by its terms on January 1, 1978 (Exhibit 10). It was not published in the Journal of the Missouri Bar until the January-February 1978 issue.

12. The respondent testified that, following receipt of the General Chairman's letter of December 19, 1977, he called the publishers with whom he had placed advertisements for the purpose of modifying them to comply with the Advisory Committee's Addendum to DR 2-101-B which was to be effective on January 1, 1980, but in each case was told that it was too late to make any changes in the publications which were in the process of production.

13. Following the opening of his law office, the respondent sent out announcements about the new office in the form of Exhibit 11.

14. If Dr. Gordon M. Goldman were called as a witness he would testify as set out in Exhibit 12.

15. If Mrs. M. Goldman were called as a witness she would testify as set out in Exhibit 13.

16. The respondent testified at the formal hearing that his wife helped him in sending out announcements to friends and relatives, that she sent out announcements to persons she had known in a group known as "Life Seekers", which interests itself in the problems of newborn infants, that she used the Life-Seekers roster for the correct spellings and addresses but did not send out announcements to everyone on the roster, that he considered that such persons his wife knew were "friends" within the meaning of DR 2-102, and that he had no intention, nor did he, send announcements to persons with whom he had no connection. Further, he had no intention of sending more than one announcement to any person and, if any person received more than one, this was a mistake. He takes the position at this hearing that he cannot be disciplined on account of his having sent out such announcements. He, nevertheless, is of the opinion that an attorney is entitled, if he wishes to bear the expensive cost of first class mailing in lieu of a newspaper advertisement, under controlling decisions of the Supreme Court of the United States, to mail such announcements of the opening of a law office to persons he does not know.

17. Respondent caused an advertisement, Exhibit 14, to be inserted in the August 1978 Yellow Pages for St. Louis. This advertisement is the subject of Count IV of the information.

* * *

19. The "Yellow Pages" mentioned in paragraph 17 and 18 are circulated in both Missouri and Illinois; to wit: the City of St. Louis, St. Louis County, East St. Louis, Illinois and Granite City, Illinois.

20. The Yellow Page advertisements which are the subject of Counts I, II, and IV of the Information are proper and have been proper under the rules of the Supreme Court of Illinois. Illinois Bar opinion is set out in Exhibit 17.

21. The areas of law practiced by the respondent, as listed in the Yellow Page advertisements, are among the areas of law listed by the American Bar Association in its compilation of "fields of law."

22. The respondent practices law in both Illinois and Missouri and he has clients, and accepts clients, from both states.

APPENDIX H

Report Of Committee
(September 9, 1977)

Honorable J. P. Morgan
Chief Justice
Supreme Court of Missouri
Supreme Court Building
Jefferson City, Missouri

Dear Mr. Chief Justice:

We take this means of submitting to the Court another interim report from your Committee on Professional Ethics and Responsibility which was created by order of the Court on June 25, 1974. This committee succeeded an earlier committee which examined the then proposed American Bar Association Code of Professional Responsibility in 1970, and a number of the members of the present committee, including the chairman, served on the earlier committee. That review produced a lengthy printed report to the Court, following which the Code was adopted with certain significant deletions and amendments recommended by the committee. This committee also has reported previously on other matters.

Our immediate problem involves advertising by lawyers which has been a matter of some attention and concern in the profession and elsewhere for a number of years. The immediacy of the matter arises out of the decision of the Supreme Court of the United States in *Bates and O'Steen* v. *State Bar of Arizona* on June 27, 1977.

We have considered carefully the principal opinion and, because it was a court divided five to four, the dissenting opinions as well. We have further considered carefully the report of the Task Force on Lawyer Advertising created by Justin A. Stanley, President of the American Bar Association, immediately

following the *Bates and O'Steen* decision. We have further studied carefully the report of the Board of Governors of the American Bar Association to the House of Delegates, as well as the recommendations adopted by the House of Delegates on August 10, 1977, following the Task Force and Board of Governors reports. We have also had available a wealth of material from other sources.

Those American Bar Association studies brought forth two proposals which have come to be known as Proposals A and B, respectively. The House of Delegates approved Proposal A as amendments to the Code of Professional Responsibility. The House further directed that both Proposals A and B be circulated to the various states and regulatory agencies for their consideration. The committee has heretofore provided the Court with copies of both the Task Force and Board of Governors reports, together with Proposals A and B.

We have met on several occasions and have spent many hours beyond the meetings themselves in consideration of the matters involved.

Early on, the committee unanimously favored the approach of Proposal A for amendments to the Ethical Considerations and Disciplinary Rules under Canon 2. We have made substantial amendments to Proposal A, however, for adaption to the present Ethical Considerations and Disciplinary Rules under Canon 2 in Missouri.

I am attaching as a part of this report the committee's recommendations respecting amendments to the Ethical Considerations and Disciplinary Rules under Canon 2. Deletions in the present rule are identified by brackets. Changes or additions in the text are indicated by underlining. The committee is unanimous in these recommendations.

Without attempting to review or examine all of the somewhat complicated and difficult issues at length, it is necessary to comment in several areas.

The injunction of Canon 2 to lawyers is to "assist the legal profession in fulfilling its duty to make legal counsel available." The narrow majority in *Bates and O'Steen* holds that advertising by attorneys is not subject to blanket suppression under the First Amendment to the Constitution of the United States. It further holds, however, that advertising by attorneys may be regulated and that there may be reasonable restrictions on the time, place and manner of advertising. False, deceptive or misleading advertising is expressly proscribed, as are advertising claims as to the quality of services. Special problems with electronic media were said to warrant special consideration. Finally, the constitutional issue was confined by the Court in the concluding paragraph of the majority opinion to a publication in a newspaper of a truthful advertisement concerning the availability and terms of "routine legal services."

To the end that members of the profession in Missouri may fulfill their duty under Canon 2 and that the law as declared by five justices in *Bates and O'Steen* may be implemented in Missouri, we have sought to draw a middle ground between a prohibition, on one hand, and unlimited advertising on the other, as did the Court. Under the circumstances, and with the facts in *Bates and O'Steen* in mind, we believe we have done so.

We have recommended approval of limited advertising in newspapers, periodicals and the yellow pages of telephone directories distributed in the geographic areas in which the lawyer resides or maintains offices, or in which a substantial part of the lawyer's clientele resides. We have not recommended approval of electronic media advertising, billboards, or handbills.

We have recommended approval of nine categories of information which may be included in such advertisements, including fixed fees for ten specific routine legal services and a provision for advertising fixed fees for such other routine legal services as may be approved by the Missouri Bar Administration, all to be restricted against misunderstanding or deception by re-

quirements that the advertisement disclose that the quoted fee is available only to those whose matters fall into the services described, and that the client is entitled without obligation to a specific estimate of the fee likely to be charged, both to be in similar print size.

We have approved an indication of the area or areas of practice. Designations of particular areas or fields of law in which a lawyer practices must be authorized for that purpose by the Missouri Bar Administration. We have not approved statements indicating a limitation of practice or specialization beyond the traditional three areas of specialization. A proposal for certification of specialists is now before the Court. Until such time as action is taken in that area specifically, the committee felt that specialization should be excluded from these amendments.

The present limitations against in-person or one-on-one solicitation are continued. Where in-person advice is now approved in very limited circumstances, acceptance of employment or other benefit in connection with such in-person advice is generally forbidden, as heretofore.

In the opinion of the committee, the recommended amendments will satisfy the requirements of *Bates and O'Steen* and will strike a midpoint between prohibition and unlimited advertising, such as contemplated by the majority opinion in that decision. The proposed amendments will further fulfill the profession's duty to make legal counsel available to the public.

Members of the committee will be happy to meet with the Court at its convenience to discuss this report.

APPENDIX I

RESPONDENT'S MOTION FOR REHEARING

Pursuant to this court's Rule 84.17 the respondent, RMJ, respectfully moves the court to set aside the opinion of December 15, 1980 and to grant rehearing, or to modify or supplement the said opinion in the manner hereinafter suggested, for the following reasons:

1. The court overlooked the provisions of Article VI of the Constitution of the United States, as follows:

> "This Constitution...shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

2. In declining to consider the latest controlling decision of the Supreme Court of the United State, the court did not explicity state which counts of the information were found to be violated by the respondent. We assume that the court intended to find violations of all four counts, but suggest that there should be an explicit statement of this.

3. The court did not expressly decide the constitutional validity of DR 2-102 of Rule 4 of this court, which is alleged to be violated in the matters specified in Count III of the Information. We assume that the court intended to hold that DR 2-102 is constitutionally valid and that violation as charged in Count II has been established, but suggest that there should be an explicit statement.

4. The court overlooked and failed to rule on the matter raised in Point III(a) of respondent's brief, in which it is contended that the portion of Counts I and II which assert that absence of a required disclaimer do not state ground for discipline, inasmuch as respondent contracted for the advertising there

specified before the Advisory Committee Addendum was issued and long before he had any knowledge or means of knowledge, and respondent tried to withdraw the advertisements after learning of the Advisory Committee Addendum.

5. The court failed to rule on the contention set forth in Point I(b) of respondent's brief, in which it is argued that DR 2-101-B and the Advisory Committee Addendum should be construed, not as setting forth the only matter which may be contained in advertising, but as setting forth the matters which lawyers may advertise with assurance and without fear of challenge. We assume that the court decided the point adversely to our contention, and adopted the Informants' contrary contention that the rule and addendum set forth the only matters that may be properly advertised, but suggest that there should be an explicit statement of the court's holding.

6. The court, in properly characterizing this case as a "test" case, should make it clear that the case involved an actual controversy in which the Advisory Committee proceeded against the respondent against his will, filing an information seeking disbarment, and that the case has been sharply contested at all stages.

Office-Supreme Court, U.S.
FILED
MAY 7 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____
Appellant

On Appeal from the Supreme Court of Missouri

MOTION TO DISMISS

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No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____
Appellant

On Appeal from the Supreme Court of Missouri

MOTION TO DISMISS

Comes now the Advisory Committee of the Missouri Bar, established by Rule 5 of the Supreme Court of Missouri, Informant below, and moves the Court to dismiss this appeal pursuant to Rule 16(b) of the Supreme Court of the United States on the ground that the federal question sought to be reviewed in this Court was not expressly passed on by the Supreme Court of Missouri. See Appendix A of Appellant's Jurisdictional Statement.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED
MAR 6 1981
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CLERK

No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____,
Appellant

On Appeal from the Supreme Court of Missouri

BRIEF OF ARNOLD T. PHILLIPS, JR., AMICUS CURIAE

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No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____,
Appellant

On Appeal from the Supreme Court of Missouri

BRIEF OF ARNOLD T. PHILLIPS, JR., AMICUS CURIAE

STATEMENT OF INTEREST OF AMICUS CURIAE

Appellant and respondents, by counsel of record, have consented in writing to the filing of this brief.

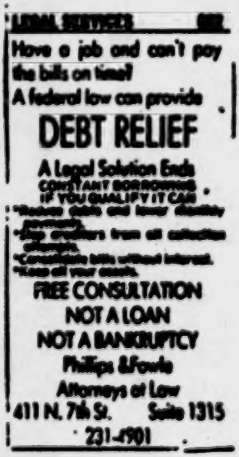
Arnold T. Phillips, Jr. (hereinafter referred to as amicus Phillips) is a member of the Missouri Bar, practicing in St. Louis, Missouri. He is the respondent in a disciplinary proceeding pending before The Advisory Committee (informants in the R_____ M. J_____ proceeding below), on account of certain advertisements which he has caused to be published, including the advertisement set forth below. That proceeding has been suspended by order of the Supreme Court of Missouri dated October 3, 1980, in Cause No. 62278, pending the disposi-

tion of *In re* R_____ M. J_____, No. 61894 in that court. If the decision below is not reversed, the stay will expire, and The Advisory Committee will resume its disciplinary proceeding against amicus Phillips.

Amicus Phillips filed briefs amicus curiae in the R_____ M. J_____ proceeding below, and through counsel participated in the oral argument.

At the invitation of the Supreme Court of Missouri, amicus Phillips and The Advisory Committee entered into a stipulation of relevant facts, which was filed in the Supreme Court of Missouri as a part of the R_____ M. J_____ proceeding. The following facts are excerpted from that stipulation.

From February to July, 1980 amicus Phillips, together with his then partner, published the following advertisement in the St. Louis Globe-Democrat, a newspaper circulated throughout the St. Louis metropolitan area in both Missouri and Illinois, on a number of occasions.


LEGAL SERVICES
Have a job and can't pay the bills on time?
A federal law can provide
DEBT RELIEF
A Legal Solution Ends
CONSULTANT BORROWING
IF YOU QUALIFY IT CAN
FREE CONSULTATION
NOT A LOAN
NOT A BANKRUPTCY
Phillips & Fowle
Attorneys at Law
411 N. 7th St. Suite 1315
231-4901

If called to testify at a formal hearing before The Advisory Committee, a bankruptcy expert would testify that Chapter 13 of the new Bankruptcy Code adopted in 1978, effective October

1, 1979, entitled "Adjustment of Debts of an Individual with Regular Income," makes available to an individual debtor, under specified circumstances, a proceeding which is not a "bankruptcy" as that term has been commonly used in the past, or as the term is commonly understood by laymen. Pursuant to Chapter 13, the individual debtor may file a plan to provide for the submission of all or a part of his future earnings or income to the supervision or control of the trustee, provide for the full payment of all claims entitled to priority under 11 U.S.C. § 507, and provide for the payment of all or part of the debts of the debtor over a period of not longer than three years, unless the court for cause approves a period up to a maximum of five years. 11 U.S.C. § 1322. In many respects the proceeding differs from a Chapter 7 bankruptcy and a Chapter 11 reorganizaton, and is greatly preferred by the individual debtor. In the opinion of the bankruptcy expert, the advertisement set forth above is not misleading in any way.

Various clients or former clients of amicus Phillips and his former partner, if called to testify, would testify that they were persons who had been in financial straits, but did not want to go through bankruptcy, and were not aware of any other solution to their problems. At least four of them had in fact talked to other lawyers previously, but those lawyers could suggest nothing but bankruptcy. Other such clients knew of no lawyers, and did not know where to get help. Most had been greatly upset by their credit problems and harassment by creditors, and found great emotional and psychological relief as a result of this advertisement. Many have been able to stop going to the doctor and taking tranquilizers or other medication. The advertisement, leading in each instance to the filing of a debt adjustment plan, ultimately enabled one such client to get married, and enabled all to avoid foreclosure of home, automobile, or other assets. All are very grateful to amicus Phillips and his former partner, and feel that the advertisement was a major turning point in their lives.

SUMMARY OF ARGUMENT

Missouri Supreme Court Rule DR 2-101(B), in prohibiting all communications other than those specified in the Addendum, prohibits lawyers from communicating to laymen information and ideas of great value to the laymen, in violation of the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

Missouri Rule DR 2-101(B), as interpreted by The Advisory Committee, and the Missouri Supreme Court, is clearly unconstitutional. It prohibits all communications other than those specified in the Rule and the Addendum. It is unquestionably "more extensive than is necessary to serve" the governmental interest asserted. *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York*, ___ U.S. ___, ___, 100 S. Ct. 2343, 2351 (June 20, 1980). Indeed, the Rule would prohibit the very advertisement which this Court held protected in *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 381-82, 385, for at least seven separate and independent violations of the Rule. The Supreme Court of Missouri did not even attempt to justify the Rule under the criteria established by this Court.

The Rule is being used by The Advisory Committee, with the endorsement and support of the Supreme Court of Missouri, to inhibit and prevent the free communication of ideas in Missouri, in flagrant violation of the First and Fourteenth Amendments. As the stipulated facts show, amicus Phillips, by his advertisements, is informing individual debtors (laymen, and in some cases laymen of limited education) of the availability of a new remedy created by the United States Congress. In so doing, he is furthering the congressional purpose of the new legislation, and exercising a fundamental right guaranteed by the First and Fourteenth Amendments.

The effect of this Rule, implemented by the disciplinary proceedings of The Advisory Committee, as endorsed by the Missouri Supreme Court, is substantially to inhibit the free flow of information in Missouri. In the absence of even a superficial effort by the Missouri Supreme Court to justify this inhibition, the decision below should be summarily reversed.

CONCLUSION

This Court should accept jurisdiction and summarily reverse the decision below. In the alternative, this Court should set the case for oral argument.

Respectfully submitted,

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March, 1981

Office-Supreme Court, U.S.
FILED
JUL 9 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____
Appellant

On Appeal from the Supreme Court of Missouri

APPELLANT'S BRIEF

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QUESTIONS PRESENTED

1. Whether, consistent with the First Amendment, applied to the states through the Fourteenth, a state may adopt and enforce a court rule listing the exclusive categories of information which are permissible in lawyers' advertisements in the printed media, and forbidding use in advertising of matter not expressly authorized by the rule.

2. (a) Whether, consistent with the First and Fourteenth Amendments, a state supreme court may discipline a lawyer for including in advertisements the concededly accurate and non-misleading information that he is licensed to practice in two states, that he is admitted to practice before the Supreme Court of the United States, and that he practices in areas of law such as "personal injury," "contract," and "securities and bonds," which designations are not among those explicitly approved by the state authorities.

(b) Whether, consistent with the Commerce Clause, a state supreme court may discipline a lawyer for publishing, in a telephone directory which circulates in adjoining states, the truthful information that he is licensed to practice in both states.

3. Whether, consistent with the First and Fourteenth Amendments, a state supreme court may discipline a lawyer for mailing a simple announcement of the opening of his office to persons with whom he is not acquainted, on the basis of a court rule limiting the mailing of announcements to "lawyers, clients, former clients, personal friends and relatives."

PARTIES TO THE PROCEEDING

The appellant, R_____ M. J_____ is a lawyer who was disciplined by the court below. That court ordered that his full name not be used in the official reports of the case and not be released to the media. The Clerk has been advised as to his full name and address.

The appellees are members of the Advisory Committee of the Missouri Bar, established by Rule 5 of the Supreme Court of Missouri, who filed an information in that court seeking disbarment of the appellant. They are Harold W. Barrick, Chairman, Owen W. Anglum III, Spencer J. Brown, Lynn M. Ewing Jr., Frank P. Sebree, Fred H. Mayer, Robert C. Smith Jr., and Donald J. Stohr.

Because the case presents issues of constitutionality of rules of the Missouri Supreme Court, 28 USC Sec. 2403(b) may be applicable and copies of the Notice of Appeal and Jurisdictional Statement have been served on the Honorable John Ashcroft, Attorney General of Missouri, pursuant to this Court's rule 28.4(c.) He declined to participate in the case.

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Mo. Sup. Ct. Rule 4, DR 2-102(D) 24

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Other Materials

Andrews, Lori B. Birth of a Salesman: Lawyer Advertising and Solicitation, Chicago, ABA Press, 1980 . 12,22

OPINIONS BELOW

The opinion of the Supreme Court of Missouri (A-1)[1] together with the dissenting opinions of Bardgett, Ch. J. (A-5) and Seiler, J. (A-10) is reported 609 S.W.2d 411. The case was filed originally in the Supreme Court of Missouri, and there are no other opinions.

JURISDICTION

The opinion of the Supreme Court of Missouri was filed and judgment privately reprimanding the appellant and directing him to pay costs was entered on December 15, 1980. Motion for rehearing (A-31) was denied on January 5, 1981.

Notice of Appeal to this Court was filed in the Supreme Court of Missouri on January 9, 1981. The appeal was docketed on February 23, 1981 and probable jurisdiction noted June 1, 1981.

This case involves the constitutionality of Rules DR 2-101-(B) and DR 2-102 of Rule 4 of the Supreme Court of Missouri, and the decision of the court below is in favor of the constitutionality. Such rules are considered statutes under 28 USC Sec. 1257(2). See Bates v. Arizona, 433 US 350 (1977); In re Primus, 436 US 412 (1978); Ohralik v. Ohio, 436 US 447 (1978.) This Court, therefore, has jurisdiction under 28 USC Sec. 1257 (2).

CONSTITUTIONAL PROVISIONS AND COURT RULES

Constitution, Article I, Section 8

The Congress shall have power:... To regulate commerce ... among the several states.

---

[1] This Court has allowed the parties to dispense with the printing of a Joint Appendix, since neither side considered it necessary to print any material which was not appended to the Jurisdictional Statement. References to that appendix are preceded by A-. There are also references to the Exhibits to the Stipulation (Stip.) on which the case was presented to the court below.

First Amendment

Congress shall make no law...abridging the freedom of speech or of the press ... .

DR 2-101-(B), Rule 4, Supreme Court of Missouri

A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication respecting the quality of legal services or containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.

In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish, subject to DR 2-103, the following information in newspapers, periodicals and the yellow pages of telephone directories distributed in the geographic area or areas in which the lawyer resides or maintains offices or in which a substantial part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication complies with DR 2-101(A), and is presented in a dignified manner:

1) Name, including name of law firm and names of professional associates; addresses and telephone numbers;

2) One or more particular areas or fields of law in which the lawyer or law firm practices if authorized by and using designations and definitions authorized for that purpose by The Advisory Committee;

3) Date and place of birth;

4) Schools attended, with dates of graduation and degrees;

5) Foreign language ability;

6) Office hours;

7) Fee for an initial 30-minute consultation;

8) Availability upon request of a schedule of fees;

9) Credit arrangements for payment of fees will be given consideration;

10) The fixed fee to be charged for the following specific routine legal services:

1. An uncontested dissolution of marriage;
2. An uncontested adoption;
3. An uncontested personal bankruptcy;
4. An uncomplicated change of name;
5. A simple warranty of quitclaim deed;
6. A simple deed of trust;
7. A simple promissory note;
8. An individual Missouri or federal income tax return;
9. A simple power of attorney;
10. A simple will;
11. Such other services as may be approved by The Advisory Committee; the description of which would not be misunderstood or be deceptive, provided that the statement discloses that the quoted fee will be available only to clients whose matters fall into the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be chaged in

print size at least equivalent to the largest print used in setting forth the free information.

Missouri Bar Advisory Committee Rule

ADDENDUM TO DR2-101(B)(2)

Pursuant to the direction and authority of DR2-101(B)(2) of the Order of the Supreme Court of Missouri entered October 24, 1977, effective January 1, 1978, the Advisory Committee adopts and promulgates the following rules and regulations for advertising by the legal profession in Missouri to be effective simultaneously with the Order of the Supreme Court on January 1, 1978.

* * *

III. Subject to DR2-101(A) and (B), the folowing areas for fields of law may be advertised by use of the specific language hereinafter set out:

1. "General Civil Practice"
2. "General Criminal Practice"
3. "General Civil and Criminal Practice."

If a lawyer or law firm uses one of the above, no other area can be used except specialties under Paragraph I.[2] If one of the above is *not* used, then a lawyer or law firm can use one or more of the following:

1. "Administrative Law"
2. "Anti-Trust Law"

---

[2] Although Paragraph 1 of the Addendum refers to "specialists ... under procedures established by the Supreme Court of Missouri...," no procedures have been established and no lawyers have been certified as specialists. (*Counsel's note*)

3. "Appellate Practice"
4. "Bankruptcy"
5. "Commercial Law"
6. "Corporation Law and Business Organizations"
7. "Criminal Law"
8. "Eminent Domain Law"
9. "Environmental Law"
10. "Family Law"
11. "Financial Institution Law"
12. "Insurance Law"
13. "International Law"
14. "Labor Law"
15. "Local Government Law"
16. "Military Law"
17. "Probate and Trust Law"
18. "Property Law"
19. "Public Utility Law"
20. "Taxation Law"
21. "Tort Law"
22. "Trial Practice"
23. "Workers Compensation Law."

No deviation from the above phraseology will be permitted and no statement of limitation of practice can be stated.

If one or more of these specific areas of practice are used in any advertisement, the following statement must be included in the same advertisement in print size at least equivalent to the largest print used in setting forth the areas of practice:

"Listing of the above areas of practice does not indicate any certification of expertise therein."

ADOPTED BY THE ADVISORY COMMITTEE. MISSOURI BAR ADMINISTRATION ON NOVEMBER 13, 1977.

DR 2-102 Rule 4 Of The Supreme Court Of Missouri

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, except that the following may be used if they are in dignified form:

* * *

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates or predecessor firms ina continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

STATEMENT OF THE CASE

On January 2, 1980 the Advisory Committee of the Missouri Bar[1] filed a four-count information (A-18) in the Supreme Court of Missouri, charging the appellant with violation of the rules of that court having to do with advertisements by lawyers.

Counts I, II and IV of the Information charged violation of DR 2-101(B) of the Supreme Court of Missouri, *supra* p. 2, because of advertisements in a suburban newspaper and in the "Yellow Pages." The advertisement which is the subject of Count IV is fairly typical of those declared on in all three counts, and of the kind of advertising the appellant proposes to use in the future. (A-25). It was published in the August, 1978 Yellow Pages for Metropolitan St. Louis, which circulate in both Missouri and Illinois, and reads as follows:

J_____, R_____ M.

.Corporate
.Partnership
.Real Estate
.Tax
.Bankruptcy
.Probate
.Contract
.Anti-Trust
Labor
.Criminal
.Aviation
.Securities - Bonds

.Personal Injury
.Trials & Appeals
.Wills, Estate Planning
.Pension & Profit Sharing Plans
Workmen's Compensation
.Divorce, Separation
.Custody, Adoption
.Zoning & Land Use
.Entertainment/Sports
.Food, Drug and Cosmetic
.Communication

(Listing of the Above Areas Does Not Indicate Certification Therein)

---

[1] The Advisory Committee is a standing committee of the Supreme Court of Missouri, established by that court's Rule 5. It has the responsibility for prosecuting disciplinary proceedings and for giving formal and informal opinions on the Canons of Professional Responsibility as set out in Rule 4 of that court.

Admitted to Practice Before
THE UNITED STATES
SUPREME COURT

Licensed in: MISSOURI & ILLINOIS

120 South Central 721-2000

The Information charged that this rule violated DR2-101(B)

"in that said advertisement lists Courts in which the appellant is admitted to practice and lists areas of law which are not approved for advertising purposes. ..."

Three portions of the advertisement were challenged, as follows: (i) "Admitted to Practice before the United States Supreme Court;" (ii) "Licensed in Missouri and Illinois;" and (iii) the listing of fields or areas of law which differ from those listed in the Advisory Committee Addendum to DR 2-101-(B), *supra*, p. 4.

The appellant's advertisement in the August, 1978 Yellow Pages (A-25, Exh. 14), lists 23 areas of law. Of these four are in the exact language of the Advisory Committee Addendum[4] and are as follows:

BANKRUPTCY

ANTI-TRUST

LABOR

CRIMINAL

In some other instances, there was a variation as to the language used, as follows:

---

[4] Unless the word "Law", which we consider to be unnecessary and redundant, is considered by the Advisory Committee to be an essential part of the designation of each field or area of law.

Appellant	Advisory Committee
CORPORATE PARTNERSHIP	CORPORATION LAW AND BUSINESS ORGANIZATIONS
REAL ESTATE	PROPERTY LAW
PROBATE	PROBATE & TRUST LAW
PERSONAL INJURY	TORT LAW
TRIALS & APPEALS	TRIAL PRACTICE APPELLATE PRACTICE
WORKMEN'S COMPENSATION	WORKERS COMPENSATION
DIVORCE-SEPARATION CUSTODY-ADOPTION	FAMILY LAW

Eight other areas of law listed by the appellant are not listed in any manner by the Advisory Committee in its Addendum, namely:

CONTRACTS

AVIATION

SECURITIES-BONDS

PENSION & PROFIT SHARING PLANS

ZONING & LAND USE

ENTERTAINMENT/SPORTS

FOOD, DRUG & COSMETIC

COMMUNICATIONS

It is stipulated that all of the fields and areas of law listed by the appellant are included among those listed by the American Bar Association in its 1979-80 Directory.

Counts I and II of the Information (A 16-17) are similar to Count IV, but they also include the charge that the appellant's advertisements did not include a disclaimer of certification of expertise, as required by the Advisory Committee Addendum. Although the appellant included a disclaimer in his later advertisements, we challenge the requirement of disclaimer in the context of DR 2-101-B as construed by the court below, since the exact words are prescribed and no explanation is permitted.[5]

Count II (A-17) charged violation of DR 2-102(A)(2) because of the mailing of announcements to "persons other than lawyers, clients, former clients, personal friends and relatives." The announcement in question (A-24, Exh. 11) reads as follows:

R_____ M. J_____
Formerly with the United States
Securities and Exchange Commission

IS PLEASED TO ANNOUNCE THE OPENING OF HIS OFFICE FOR THE GENERAL PRACTICE OF LAW

Suite 1404
Chromalloy Plaza

SAINT LOUIS (CLAYTON) MISSOURI 63105

(314) 862-4321

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[5] Appellant did not learn of the requirement of a disclaimer until he received the General Chairman's letter of December 19, 1977. (A-24). He tried unsuccessfully to stop publication of the newspaper advertisement which he had ordered in October of 1977, which was intended to be published in December of 1977, but which through mistake of the publisher was not published until January of 1978. (A-24) He also tried unsuccessfully to hold up the Yellow Pages advertisement which he had contracted for on November 3, 1977. (*Id.*). See discussion in dissenting opinion of Judge Seiler, (A-8.) Discipline for failure to include a disclaimer which was not required at the time the advertisements were contracted for raises serious problems of due process.

Appellant, in his return to the Information (A-19), relied on the First Amendment, stating that he

> Under the First and Fourteenth Amendments to the Constitution of the United States has the constitutional right to publish an advertisement setting forth the fields of law practiced in meaningful and understandable language to the layman, without restriction as required by the wording of the Advisory Committee Memorandum, and also has the constitutional right to list in an advertisement the courts before which he is licensed to practice
>
> "... has the constitutional right to distribute an announcement containing the material set out in Count III of the Information to any persons he chooses, without restriction to lawyers, clients, former clients, personal friends and relatives..."

The return also charged violation of the Commerce Clause of Article I, Section 8 to the extent that the rule prohibited a statement, in a telephone directory which circulated in both Missouri and Illinois, that the appellant is licensed to practice in both of those states.

The case was submitted to the court on the basis of stipulated facts. The court below ordered that the appellant be reprimanded, and that he pay the costs of the action. The majority opinion (A-1) is cryptic, but it is clear from reading that opinion in the context of the pleadings and the dissenting opinions that the court below construed its rules as forbidding the inclusion in advertisements of matter which is not specifically approved, that it upheld its rules against all constitutional challenges raised, and that it found violation of all four counts of the Information. As to the constitutional points, the opinion stated: (A-2)

> We are urged now by [appellant] to follow the *Central Hudson* model. We respectfully decline to enter the thicket of attempting to anticipate and to satisfy the *subjective ad hoc* judgments of a majority of the justices of the United States Supreme Court.

Chief Justice Bardgett (A-5) and Judge Seiler (A-7) dissented.

2. **The History Of The Missouri Rules**

Following the decision in *Bates* v. *Arizona,* 433 U.S. 350, (June 27, 1977), the court below directed its Committee on Ethics and Professional Responsibility (a different body from the Advisory Committee) to draft proposed amendments to its rules governing legal advertising. That Committee reported on September 27, 1977. Its transmittal letter is included A-27. It proposed amendment of Missouri's DR 2-101, which was identical to the Arizona rule struck down in Bates. The Committee recommended the essential plan of Proposal A of the American Bar Association, which listed 25 categories of information which were considered appropriate in lawyers' advertisements in the printed media.[6] The Committee, however, recommended that this list be cut to nine items. It recommended no change in DR 2-102-(A)(2), which deals with the use of the mails by attorneys in publicizing matters relating to their practice.

On October 24, 1977 the court below issued an amended DR2-101, adopting the Committee's report in substance, but adding a tenth category of permissible information. The amended rule, *supra* p. 2, was published in the December, 1977 Missouri Bar Journal and became effective by its terms on January 1, 1978. (A-23)

The Advisory Committee Addendum, *supra* p. 4, was adopted November 18, 1977 and was published in the Missouri Bar Journal for January-February 1978. (A-24) It provided that:

"No deviation from the above phraseology will be permitted and no statement of limitation of practice can be stated."

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[6] For discussion of Plan A, see In re Petition for Rule of Court Governing Lawyer Advertising, 564 SW2d. 638, (Tenn., 1978; Lori B. Andrews, *Birth of a Salesman: Lawyer Advertising and Solicitation,* A.B.A. Press, 1980.

The Advisory Committee issued no accompanying report or other statement explaining why it chose certain areas and designations, and not others. There have been minor modificatons in the Areas from time to time,[7] but the addendum is now in force substantially as reproduced above.

3. The Appellant's Advertising

Appellant graduated from John Marshall Law School in 1973 and was admitted to the bar in both Missouri and Illinois that same year. He spent several years in Washington, D.C. and, during part of that time, was employed by the Securities and Exchange Commission. He moved to Saint Louis, Missouri and in April of 1977 opened a law office, practicing alone. (A-23)

The appellant, following *Bates,* sent out simple "tombstone" announcements, as pictured above, to a restricted list of addressees (A 24-5).[8]

Also following *Bates* the appellant placed advertisements in several suburban newspapers, including the Jewish Light. No advertisement which appeared prior to January 1, 1978 is the subject of a charge in the Information. (A-23)

In the latter part of October, 1977, the appellant entered into a contract for the insertion of an advertisement in the West End Word, a newspaper published in St. Louis on a monthly or bimonthly basis. (A-24) This advertisement is the subject of Count I of the Information and, except for the absence of a

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[7] "Tort Law" has been changed to "Negligence Law." "Family Law" has been changed to "Domestic Relations Law."

[8] There was a factual issue as to whether the appellant caused announcements to be sent to people he did not know personally, which was not expressly resolved by the court below except by the result reached, which necessarily demonstrates that the issue was resolved adversely to the appellant. (A24-25.)

disclaimer, is essentially similar to the advertisement declared on in Count IV and set out at page 7, *supra.*[9]

On November 3, 1977, appellant entered into a contract for the insertion of an advertisement in the Yellow Pages of the Saint Louis Suburban Telephone Directory. This advertisement appeared in the February, 1978 Yellow Pages, and is also essentially the same as the Court IV advertisement[10] except for the omission of the disclaimer. (A-24)

On November 3, 1977, Harold W. Barrick, General Chairman of the Advisory Committee, wrote appellant with regard to the advertisement in the Jewish Light, as follows: (Stip., Exh. 1.):

> "... This advertisement is in complete violation of the Code of Professional Responsibility in Missouri as it now exists and also is in violation of the rule governing lawyer advertising adopted by the Supreme Court of Missouri to be effective January 1, 1978. I suggest that you immediately see that this ad is deleted from further issues of the newspaper and wait until all of the rules and regulations concerning lawyer advertising, which only become effective on January 1, 1978, are promulgated."

At the time this letter was written Missouri had no regulation of printed advertising except for the pre-Bates rule.

Appellant replied to the General Chairman's letter on November 15, 1977, (Stip., Exh. 5), expressing the opinion that the Jewish Light advertisement constituted protected speech under *Bates.* He again wrote the General Chairman on December 16, 1977, (Stip., Exh. 6), requesting that the Advisory Committee "specifically approve the display advertisement which you indicate you have." The letter continued as follows:

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[9] See Note 5, *supra.*

[10] See Note 5, *supra.*

> I cannot rescind any previous contractual advertising arrangements made, but I shall defer any future display newspaper advertisements of the type previously published from this day forth for a reasonable time until I receive an opinion specifically on my advertisement. I hope the matter may be promptly resolved.

The General Chairman responded to both of these letters on December 19, 1977, (Stip., Exh. 7), apologizing for not having answered sooner and going on to state that "your display ad does not meet the requirements of the rules on advertising." He enclosed a copy of the Advisory Committee Addendum, which had not then been published and with which the appellant was previously unfamiliar. The letter continued as follows:

> Please note further that the rule requires only use of the specific phraseology adopted by the Advisory Committee. Many of the matters do not appear in the approved list of areas of law. In addition, neither the rule adopted by the Supreme Court of Missouri or the addendum adopted by the Advisory Committee allows an attorney to state what courts he is admitted to practice in. I trust that your advertisements after January 1 (which is the first day that you can place an advertisement without violation of the rules of the Supreme Court of Missouri) will comport with the rules previously adopted.

Appellant seeks to continue his practice of advertising in the Yellow Pages, with insertions similar in form and content to the example quoted above. He takes the position that he has the constitutional right to do this, and that the rules of the court below deprive him of freedom of expression in violation of the First and Fourteenth Amendments, to the extent that they deprive him of this right.

SUMMARY OF THE ARGUMENT

1. Appellant was disciplined by the court below for publishing in a newspaper and in the Yellow Pages an advertisement which is conceded to be accurate and not misleading, because the advertisement listed the courts in which he was admitted to practice, and listed fields or areas of law which had not been approved for advertising purposes. The advertisements were held to violate DR2-101(B) of the court below, which lists the ten categories of information permitted in lawyers' advertisements in the printed media and prohibits the inclusion of any other information in lawyers' advertising. This rule is in violation of *Bates* v. *Arizona,* 433 U.S. 350 (1977), which holds that lawyers have the constitutional right to make use of truthful, factual and non-misleading advertising in informing the public of their availability and of the services they provide. It also violates the holding of *Central Hudson Gas and Electric Company* v. *New York Public Service Commission,* 447 U.S. 557 (1980), in that it is not narrowly drawn and is far more restrictive of freedom of expression than is necessary to serve the proper governmental purpose of protecting the public against deceptive or misleading advertising. The rule operates as a prior restraint and censorship, in violation of the First Amendment.

2. The appellant has the constitutional right to advertise the courts in which he is admitted to practice, including this Court. The burden is on the regulatory authorities to show some reason why this information may not be included in lawyers' advertising, and none has been shown. The appellant also has the First Amendment right to list the fields or areas of law in which he practices, using accurate and non-misleading designations of his own choosing. The Advisory Committee Addendum to DR 2-101(B), providing that certain recognized fields or areas of law may not be listed in any manner in lawyers' advertisements, and that other fields or areas may be listed only in the exact language set out in the Addendum, contravenes the First Amendment. Appellant also has the right, under the Commerce Clause, to list

the fact of admission in two states in a telephone directory circulating in both of those states.

3. Appellant was also disciplined for mailing a simple tombstone announcement of the opening of his law office to a married couple who asserted that they were not acquainted with him, pursuant to DR2-102(A)(2) of the court below, a pre-Bates rule which permits the mailing of announcements only to "lawyers, clients, former clients, personal friends, and relatives." The restrictions of this rule are contrary to the holdings of *Bates* and *Central Hudson, supra,* in that the rule forbids the dissemination by mail, of truthful and factual information about a lawyer's availability without any showing of a significant governmental interest in limiting the use of this medium. There is no logical reason why the same advertisement which can be published in a newspaper could not be sent through the mail to members of the general public with whom the lawyer is not acquainted. Two state courts of last resort have so held. The rule of the court below, limiting the class of addressee to whom such announcements may be sent, is far more restrictive than is necessary to serve any proper governmental purpose.

ARGUMENT

I. A Disciplinary Rule Which Sets Out An Exclusive List Of Items Which May Be Included In Lawyers' Advertisements In The Printed Media, And Which Prohibits The Inclusion Of Other Items Even Though Concededly Accurate And Not Misleading, Violates The First Amendment.

There is no contention that the appellant's advertising in the printed media is in any respect untruthful, inaccurate or misleading. The appellant was not charged with violation of DR2-101(A), which prohibits advertising

> "respecting the quality of legal services or containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim."

The appellant is charged in Counts I, II and IV for publishing truthful information, simply because the information is not authorized by the express language of DR 2-101(B). The court below necessarily accepted the Advisory Committee's contention that the rule prohibited advertisements containing any items which were not specifically listed. Otherwise there would have been no basis for discipline.

DR 2-10-(B) is in plainest violation of the holding of *Bates* v. *Arizona*, 433 U.S. 350 (1977). *Bates* held that a blanket prohibition on advertising by lawyers violated the First Amendment. The *Bates* opinion dealt primarily with price advertising for routine legal services, which is a problem not involved in this case. Bates, however, gave attention to the other items included in the advertisement before the court and illustrated in the official reports, and found that they were protected by the First Amendment. The opinion specifically approved the description of the Bates-O'Steen operation as a "Legal Clinic," and held that they had the right to advertise "Legal Services for Very Reasonable Fees." This latter statement is not capable of categorical proof, and goes well beyond anything contained in

the appellant's advertisements. The thrust of the *Bates* opinion is that lawyer advertising which is factual and not misleading is protected speech under the First Amendment.

Bates recognizes that there is a public interest in reasonable regulation of legal advertising, but holds that such regulation must serve a proper governmental purpose. The opinion suggests permissible regulation along the following lines:

(1) Prohibition of advertising that is deceptive or misleading;

(2) Limited supplementation by way of warning or disclaimer;

(3) Reasonable restrictions as to time, place and manner of advertising;

(4) Consideration of the special problems of the electronic media.

(5) Regulation of claims respecting the quality of legal services.

The enumeration of these particulars demonstrates quite clearly that the Court cannot sustain a blanket regulation such as Missouri has attempted. Not one line in *Bates* gives any support to the scheme of regulation attempted in DR 2-101(B). That rule, indeed, would prohibit advertising containing some of the items included in the *Bates* ad, simply because these are not specifically authorized. The *Bates* ad had a logo of the scales of justice, a statement "Do you need a lawyer?", a statement in the last line, "Information regarding other types of cases furnished on request," and, finally, fees for services such as "legal separation" and "preparation of all court papers and instructions on how to do your own simple uncontested divorce," which are not listed in DR2-101(B)(10). The conflict with this controlling decision is patent.

Decisions of this Court following *Bates* also show that the Missouri rule cannot stand. *In re Primus*, 436 U.S. 412, 438 (1978) dealt with mail solicitation rather than with advertising,

but the opinion called for "narrowly drawn" rules and "carefully tailored" regulations which restrict freedom of expression no more than is necessary to serve a proper governmental interest. The Missouri rule is open-ended, and in no sense is it narrowly drawn.

The most recent decision building upon Bates is *Central Hudson Gas and Electric Corporation* v. *New York Public Service Commission*, 447 U.S. 557, 560 (1980), in which this Court set out a four-part test for regulation of commercial speech, as follows:

> "...At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it must at least concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, *and whether it is not more extensive than is necessary to serve that interest.*" (Emphasis supplied.)

The Court at page 565 reiterated the injunction of Primus that restrictions on freedom of expression must be "narrowly drawn."

As will be shown in greater detail below, the appellant's advertisements "concern lawful activity and are not misleading." They are, therefore, entitled to the protection of the First Amendment.

The Missouri regulation utterly fails under the fourth point of the *Central Hudson* test, since it is not narrowly drawn to give protection against perceived evils, but rather regulates speech that is clearly protected in the hope of achieving control over unprotected expression as a byproduct. This is an exact parallel to the plan of regulation condemned in *Central Hudson*, where

the Public Utility Commission had banned all advertising which tended to create a demand for electricity in an attempt at promoting conservation of energy. A rule which strikes at valid and potentially beneficial expression in order to regulate expression deemed to be harmful is manifestly invalid.

The *Central Hudson* analysis applies to commercial speech of all types, including lawyers' advertisements. The strong reliance the opinion placed on Bates and Primus is sufficient to show that lawyer advertising is no exception to the *Central Hudson* rule.

The court below did not make the slightest attempt to follow or to distinguish *Central Hudson*. Instead it petulantly refused to consider that case, while suggesting that the Missouri rules were valid under *Bates* and that *Central Hudson* represented a departure. In so holding the court below was mistaken. *Central Hudson* does not depart from Bates, but rather builds upon it.

Since the case is so fully controlled by decisions of this Court there is no need to discuss lower court opinions in detail.[11] *Durham* v. *Brock*, 498 F. Supp. 213, (M.D. Tenn.,

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[11] Holdings consistent with our contentions are Bolton v. Kansas State Board of Healing Arts, 473 F. Supp. 728, (D.C. Kan., 1979), holding that a state could not prohibit truthful and factual advertising by chiropractors; In re Florida Bar, 380 So. 2d. 435, (Fla., 1980), adopting the American Bar Association's less restrictive Plan B; Princeton Community Phone Book, Inc. v. Bate, 582 F. 2d. 706, (3d Cir., 1978).

In re Mountain Bell Directory Advertising, 604 P. 2d. 760, (Mont., 1979), recognized the right of lawyers to list the areas of law practiced, but held that separate classified telephone directory listings for 30-odd fields of law were misleading, in indicating that all of the lawyers listed were of special and equal competence in the areas listed.

Eaton v. Supreme Court of Arkansas, 607 SW 2d. 55, (Ark., 1980), cert. den. ____ U.S. ____ (1981) upheld disciplinary action against lawyers who included an advertisement in a book of coupons, mostly coming from merchants. The decision is supportable on the ground that the public might get the misleading impression that the lawyers' services were being offered on a bargain or discount basis.

1980) is of particular interest because it involves a court rule which is very much like the Missouri rule. The Supreme Court of Tennessee adopted a rule which prohibited the listing of fields or areas of law practiced, except in connection with the listing of fees charged for routine legal services. The district court held that the rule was unconstitutional under *Bates* because it prohibited the dissemination of truthful information, and went beyond the necessities of the situation. The opinion was handed down before *Central Hudson*, but contains an interesting anticipation of that holding.

A principal fault in Missouri's plan of regulation is that it "serves only to restrict the information that flows to consumers," (*Bates*, 367), and ignores the precept that "the preferred remedy is more disclosure, rather than less." (*Id.*) The attorney, under the rule, is absolutely prohibited from including in advertisements information which he considers to be of interest to the public, simply because the framers of the rule have not seen fit to give express approval to that information. He is limited to the boiler plate. The rule permits only "...an advertisement limited to ... spartan fare," which "provides scant nourishment." (*Id*, 367.) The Missouri authorities have done their best to adopt a rule which permits no meaningful advertising at all.[12]

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[12] The effect of DR2-101(B) in stifling creative and helpful advertising is illustrated in the Amicus brief of Arnold T. Phillips, Jr. filed in this case. Phillips published an advertisement in which he sought to inform the public about the benefits which might be available under Chapter 13 of the amended Bankruptcy Act. Such information might be very helpful to a person beset by an unsurmountable burden of debt, and uninformed as to legal remedies. Under the Missouri rule, however, this information cannot be conveyed to the public in an attorney's advertisement, for the reason that the rule does not specifically authorize it. A rule so designed does not serve the informative function which *Bates* considered to be so important. See Andrews, *op. cit.* Note 5, p. 43, observing that many state rules "restrict attorneys from advertising the type of information that would be most useful in helping the average citizen decide whether his problem required legal services and who best could provide those services."

The rule may operate in a way that is positively misleading. An attorney who chooses to list the areas of law practiced must include a disclaimer of "certification of expertise." Even though Bates suggested that a requirement of "some limited supplementation, by way of warning or disclaimer or the like," might be required, the disclaimer prescribed by the Advisory Committee Addendum is in and of itself misleading, in the context of the Missouri rule. This is because Missouri would not permit a lawyer to advise the public that the Missouri Bar does not at present certify expertise or specialists of any kind. A person reading an advertisement with the required disclaimer might get the false impression that the advertiser lacked a credential which other attorneys possessed. The denial of opportunity for explanation or clarification goes beyond the necessities of the case and is constitutionally infirm.

The Missouri rule, furthermore, is inconsistent with the entire course of decisions of this Court giving effect to the First Amendment. The essence of freedom of expression consists of freedom to choose one's own language. Missouri's rule virtually establishes a conclusive presumption that any lawyer advertising which is not expressly allowed by its rule is misleading. This manifestly is a prior restraint. It is inconsistent with the holding of *Freedman* v. *Maryland,* 380 U.S. 51, (1965), that the governmental authority has the burden of showing that any restrictions on First Amendment rights are justified, and cannot shift that burden to the speakers. It violates the holding of *Consolidated Edison Company of New York, Inc.* v. *New York Public Service Commission,* 447 U.S. 530 (1980), that restrictions on freedom of expression "may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest." The rule, in sum, is an unprecedented and unconstitutional restriction of First Amendment rights.

II. Appellant Has The Constitutional Right To List In Advertisement (i) The Courts In Which He Is Admitted To Practice And (ii) The Fields Or Areas Of Law In Which He Practices.

Any suggestion that a lawyer who is licensed in Missouri and Illinois cannot advise the public that he is so licensed, in a telephone directory which circulates in both states, is utterly refuted by Bates and Central Hudson. This information would surely be helpful to a person who is looking for a lawyer and who would like to find one who can take care of his legal needs.[13]

We are mindful of the question raised by Judge Seiler in his dissenting opinion (A-9) about the appellant's statement that he is "Admitted to practice before the Supreme Court of the United States." A lawyer, however, should be able to inform the public of this truthful item, and allow the public to decide what weight to give it. Admission to the bar of this Court, under

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[13] Strange to say, Missouri's DR2-102(D) requires a listing on the letterhead of a firm of attorneys which has offices in more than one state of the jurisdictions in which the several members and associates are admitted to practice, unless all persons on the letterhead are admitted in all of the states in which the firm lists offices.

Apart from the First Amendment issue, Missouri's discipline of appellant for advertising his licensing in both states is also infirm under the Commerce Clause, (Art. I, Sec. 8). A state may not regulate the services provided by a licensed professional in neighboring states. *Bigelow* v. *Virginia*, 421 U.S. 809, 824 (1975), and it "may not, under the guise of exercising internal police powers, bar citizens of another state from disseminating information about an activity that is legal in that state." *Id.*, p. 824. Missouri's attempt to eliminate from the St. Louis Yellow Pages the truthful information that certain attorneys are licensed to practice in Illinois, when one of the principal purposes of the directory is to facilitate the interstate exchange of such information, is a direct and unlawful burden on interstate commerce.

Rule 5, requires three years of practice and an application supported by references from members of the bar of the Court. One so admitted may publish the fact by framing the certificate furnished him. The fact of admission is regularly listed by attorneys in standard legal directories, which are freely available at public libraries. A person who might want to litigate a constitutional issue or to help a relative or friend in seeking habeas corpus might be interested in knowing about a lawyer's admission to the bar of this Court. Surely as many users of the telephone directory would be interested in this fact as would be interested in knowing that a lawyer practices "International Law," which is one of the areas approved for advertising by the Advisory Committee. But we need not reach this point. Nothing in the existing rule expressly forbids a lawyer to list the fact of his admission to the bar of this Court. The prohibition is found only from the absence of express authorization. If Missouri believes that there is good reason for forbidding such a listing then, under *Central Hudson,* it should adopt a specific rule and see whether the rule could stand constitutional scrutiny.[14] Or it could allege that the statement is "self-laudatory" under DR2-101-(A), in specific charges brought under that rule. We doubt that either of these strategies would succeed, in this particular instance, but it is not necessary to explore this issue further. The rule under which the appellant was charged simply cannot support the discipline imposed. Any contrary conclusion would sanction broad, blanket rules going little beyond the pre-*Bates* rule, and would then force lawyers to defend any part of a publication which later strikes the regulatory authorities as undesirable. The "narrowly drawn" requirement of *Primus* and *Central Hudson* precludes such blanket rules.

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[14] See, e.g. Friedman v. Rogers, 440 U.S. 1, (1979), sustaining a specific prohibition against the use of trade names by licensed optometrists.

The Advisory Committee approved the listing of 23 areas of law for advertising purposes, but gave no explanation as to why some areas where chosen and other excluded. The following observations are appropriate:

(1) There is no limitation on the number of areas which a lawyer may list. One so disposed could list all 23 of the approved areas without violating the rule.

(2) An attorney does not have to have any experience in an area he chooses to list.

(3) The approved areas cannot be justified on the ground that they are the basic or fundamental areas of general practice. The Advisory Committee permits the listing of "Anti-Trust Law," "Financial Institutional Law," "International Law," and "Public Utility Law," which are hardly staples of general practice.

(4) There is no provision for application to the Advisory Committee for permission to list an area of law not set out in the Addendum.

(5) Inasmuch as the Missouri Bar does not have any kind of program for the certification of specialists, there is no occasion to decide whether a state which did certify specialists could adopt a rule prescribing the exact language to be used in the description of the specialty. The Addendum indicates clearly that a lawyer, by indicating the areas in which he practices, may not hold himself out as a specialist, and must so state.

The Addendum is in plain violation of *Bates* and *Central Hudson*. The appellant, who has worked as a lawyer for the Securities and Exchange Commission, is not allowed to tell the public that he handles "Securities-Bonds." He is not permitted to say that he is available for "Contracts," or for "Zoning-Land Use" matters. This is the effect of the Addendum, as applied by the court below, even though the areas listed by the appellant in his advertisement are set out by the American Bar Association in its 1979-80 Directory.

The specification of the exact language which must be used is likewise unjustifiable. The appellant told the public that he was available for "Personal Injury" matters. The term he used is accurate, descriptive, and generally understood. There has been no suggestion of any legitimate reason why it cannot be used in advertising. The Advisory Committee first told the appellant that the appropriate term was the highly legalistic designation, "Tort Law," which is certainly not a household expression. Later the designation was changed to "Negligence Law," which, in this era of strict liability, does not accurately describe the range of actions for personal injury. Appellant is not allowed to say, "Real Estate," which is a term in common usage, but must say, "Property Law." The lawyer may not say "Divorce-Separation-Custody-Adoption." The term initially approved was "Family Law," and this was later changed to "Domestic Relations." Examples need not be multiplied. The Addendum, making use of an unprecedented form of regulation, tells lawyers the exact words they must choose if they propose to advertise areas of law in which they practice. The concededly valid purpose of making sure that areas of law are described accurately can effectively be served by a regulation which allows the advertisers to select their own designations and imposes sanctions only if the designations are shown to be misleading.

The Addendum is doubly at fault. It absolutely prohbiits references to some recognized fields or areas of law, simply by not listing them. It also denied lawyers the right to use descriptions which are clear and understandable, and in no way misleading or confusing, by prescribing its own rigid formulations and forbidding any deviation.

Unless the judgment below is reversed, appellant cannot continue to publish truthful, factual advertisements such as the one illustrated at page 8, *supra,* without putting his license in jeopardy.

III. A Rule Prohibiting The Mailing Of Announcements Of The Opening Of A Law Office To Persons Other Than "Lawyers, Clients, Former Clients, Personal Friends And Relatives" Conflicts With The First Amendment.

This point is limited to the proposition that the same advertisement which may be published in a telephone directory or a newspaper may be transmitted by mail, and that a rule permitting mailing of legal advertisements only to certain classes of addressee, and prohibiting mailing to the general public, transgresses the First Amendment. The point was expressly preserved in the return to the information, and implicitly rejected by the court below in its opinion sustaining the constitutional validity of all of its rules governing legal advertising. Both of the dissenting opinions (A-6) and (A-10) agree with our position. Factual issues as to whether the appellant caused announcements to be mailed to persons he did not know need not be discussed at this stage of the case.[11]

The appellant's announcements were in simple "tombstone" form, without descriptive matter. The announcement contained no material which was not within the compass of DR2-101(B), as described in our first point, except for a statement of the appellant's former association. There is nothing in the record to indicate that the appellant was aware of any pending legal needs of the addressees, or that they had any immediate legal business. There is no necessity, therefore, to explore the significance of any distinction between "advertising" and "solicitation," as discussed in *Koffler* v. *Joint Bar Association*, 51 NY2d. 140, 412 NE 2d. 927, (1980), cert. den. ____ U.S. ____ (1981).

Count III of the Information was based on DR2-101-(A)(2), which was retained without change in the October, 1977 revision of the advertising rules of the court below in response to *Bates*. The Committee on Professional Ethics and Responsibility gave no atte on to the question of mailed advertising, as opposed

[11] See note 7, *supra*

to advertising in the printed media. The Committee did make an express recommendation against permitting "electronic media advertising, billboards or handbills," (A-29), but its transmittal letter is silent about mailed advertising. The rule relied on, then, does not represent a studied determination that there are dangers in the mailing of lawyers' advertisements which are not present in advertisements in the printed media. Count III is based on a rule which was framed at a time when it was assumed that a blanket prohibition of legal advertising was perfectly valid.

The majority opinion below, which amounts to little more than a conclusion, is completely silent on the issue of validity of DR 2-101(A)(2). The issue, however, was clearly presented by briefs and arguments and was necessarily decided adversely to the appellant in the resolution of the case. The dissenting opinions of Chief Justice Bardgett (A-6) and Judge Seiler (A-10) give testimony to the court's consideration of the issue. Judge Seiler said:

> Nor do I believe we can constitutionally prohibit lawyers from using first class mail to send out the same information they could put in a newspaper advertisement.

The proposition he announces is eminently sound and is supported by a uniform course of authority beginning with Bates.

In *Kentucky Bar Association* v. *Stuart,* 568 SW 2d. 932 (1978), two partners sent a letter to local real estate agents, listing their fees for title examination and preparation of conveyances. The local disciplinary authorities brought charges against them under a rule which is substantially the same as Missouri's DR2-101(A), and which was apparently not modified following Bates. The Supreme Court of Kentucky unanimously held that the same advertisement which could be published in a newspaper could be sent by mail. The court said, furthermore, that the addressing of a letter to persons who might have need for the legal services described, or who might come into contact with others who had such a need, could not be construed as an

impermissible solicitation such as was found to be subject to regulation in Ohralik v. Ohio, 436 U.S. 477 (1978). The present case, of course, involves absolutely nothing that could be branded as solicitation.

Similarly, the New York Court of Appeals in *Koffler* v. *Joint Bar Assocation, supra,* held that truthful and non-misleading circulars sent through the mail could not be the subject of disciplinary action for improper advertising. The case involved two attorneys who mailed several thousand circulars to real estate brokers and to persons who were assumed to be in the process of selling their homes. The circulars described the available services and fees charged. The Appellate Division, 420 NYS 2d. 560, (1980), adjudged discipline on a finding that the circulars constituted impermissible solicitation rather than proper advertising. It did not dispute the proposition that mailed advertisements by lawyers were constitutionally protected. The Court of Appeals reversed on the authority of *Bates* and *Central Hudson,* and this court denied certiorari.

The Court of Appeals noted that restrictions on commercial speech can be no more extensive than is necessary to achieve a proper regulatory purpose. It characterized the legitimate public interest in regulating legal advertising as that of "prevention of deception," and said that there was no reason to believe that mailed announcements had greater potential for deception than did advertising in the printed media. To the suggestion that mailed advertisements are more private than printed ones so that improprieties might not so readily be noticed, the court replied that there could be means of regulation less restrictive than blanket prohibition, such as requiring that copies of mailed advertisements be filed with the regulatory authorities. The court observed that the distinction between advertising and solicitation drawn by the appellate division was artificial when applied to a mass mailing such as the lawyers in the case made use of.

We agree with the highest courts of Kentucky and New York that, under *Bates* and *Central Hudson*, the prohibitory features of DR 2-101-(A)(2) cannot stand. *Bates* of course did not deal directly with advertising by mail. It is, however, grounded on the theory, implicit in the First Amendment, that wide dissemination of information about goods and services is desirable and in the public interest. See also *Buckley* v. *Valeo*, 424 U.S. 1 (1976), calling for "exacting scrutiny" of restrictions on First Amendment rights.

The First Amendment right of free expression extends to the use of the mails. *Hannegan* v. *Esquire*, 327 U.S. 146 (1946); *Consolidated Edison Company of New York* v. *New York Public Service Commission*, 447 U.S. 530 (1980). The latter case held that the state could not justify a restriction on mailings by setting up a presumed privacy interest on the part of the addressees. Any such right of privacy must be claimed by the addressees themselves, under precise regulations such as were approved in *Rowan* v. *Postal Service*, 397 U.S. 728 (1970). *In re Primus*, 436 U.S. 412 (1978) observes that a mailing does not have the potential for overbearing conduct or harassment such as may attend personal solicitation as described in *Ohralik*, decided the same day. We are aware of no case which sustains a prior restraint on mailings.

The appellees can take no comfort from the statement in Bates that there may be "reasonable" regulation of the "time, place and manner of legal advertising." That opinion gives express recognition to the "special problems of advertising in the electronic media." There is no indication that mailed advertisements present any special problems such as would justify prohibitory regulation. The normal rules governing restraints on freedom of expression, as discussed in our first point, apply to mailings.

There are affirmative reasons why a lawyer might want to use the mails in advertising. The law office might be located in a suburban or exurban community in which there is no local

newspaper, and the lawyer might feel that an advertisement in a metropolitan daily would be so buried among advertisements from other communities that it would not attract the attention of local residents. The lawyer who offers services which are required only by persons in a particular trade or business might believe that newspaper advertising would not be cost-effective, and there might be no available trade paper or journal. The justification for legal advertising, as enunciated in Bates, is inconsistent with a prohibition of the use of the mails, or with a prohibition on mailings to persons outside a specified class.

The First Amendment guarantees the right to use the medium of one's choice. Any restriction on the choice of media must find a very strong justification. This is implicit in *Linmark Associates, Inc.* v. *Willingboro Township,* 431 U.S. 85 (1977), holding that a local governmental unit could not prohibit the display of "for-sale" signs on houses. The laudable purpose of the ordinance was to discourage panic selling of houses in response to perceived changes in the racial composition of the area. The proponents argued that alternative means of expression, such as newspaper advertising, were available, but the Court held that such advertisements were characterized by "more cost and less autonomy." The Court found that the asserted benefits from the ordinance did not justify a restriction on First Amendment rights.

Neither the Committee on Ethics and Responsibility nor the court below has articulated any reason for the restrictions of mailings of legal advertisements. There is no constitutional justification for such a restriction.

CONCLUSION

The judgment should be reversed. Costs should be assessed against the appellees.

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Office-Supreme Court, U.S.
FILED
AUG 14 1981
L. STEVAS,
CLERK

No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R____ M. J____
Appellant

On Appeal from the Supreme Court of Missouri

RESPONDENT'S BRIEF

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QUESTIONS PRESENTED

1. Whether, consistent with the First Amendment, applied to the states through the Fourteenth, a state may adopt and enforce a court rule listing the exclusive categories of information which are permissible in lawyers' advertisements in the printed media, and forbidding use in advertising of matter not expressly authorized by the rule.

2. (a) Whether, consistent with the First and Fourteenth Amendments, a state supreme court may discipline a lawyer for including in advertisements the concededly accurate and non-misleading information that he is licensed to practice in two states, that he is admitted to practice before the Supreme Court of the United States, and that he practices in areas of law such as "personal injury," "contract," and "securities and bonds," which designations are not among those explicitly approved by the state authorities.

(b) Whether, consistent with the Commerce Clause, a state supreme court may discipline a lawyer for publishing, in a telephone directory which circulates in adjoining states, the truthful information that he is licensed to practice in both states.

3. Whether, consistent with the First and Fourteenth Amendments, a state supreme court may discipline a lawyer for mailing a simple announcement of the opening of his office to persons with whom he is not acquainted, on the basis of a court rule limiting the mailing of announcements to "lawyers, clients, former clients, personal friends and relatives."

4. Whether a state may adopt reasonable rules governing the conduct of lawyers in the area of advertising or whether there is to be one uniform rule throughout the states adopted by this court by judicial fiat permitting lawyers to advertise as they wish providing it is not false, misleading or deceptive with no other guide line as to what will fall within those categories.

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No. 80-1431

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OCTOBER TERM, 1980

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Appellant

On Appeal from the Supreme Court of Missouri

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

The Missouri Bar Advisory Committee adopts by reference the Statement of the Case as contained in Appellant's brief.

SUMMARY OF THE ARGUMENT

1. The State has a legitimate interest in protecting the public from advertising by lawyers which might mislead or deceive the public while at the same time assuring that there is a sufficiently free flow of information to the public which will enable the public to make an intelligent decision in the selection of a

lawyer. Although lawyer advertising under Bates v. Arizona, 433 U.S. 350 (1977) is speech protected by the First Amendment, it is commercial speech which is not accorded the same protection as other types of speech and is subject to reasonable regulation by the States in order to protect the State's interest. [Bates, *supra* and Ohralik v. Ohio, 436 U.S. 447 (1978)] DR2-101 Rule 4 of the Missouri Supreme Court in restricting the routine legal services and areas of practice which a lawyer may advertise is designed to and does prevent deception, is reasonable and is not more extensive than is necessary to serve the State's interest in protecting the public and regulating the conduct of lawyers. No case emanating from this Court holds to the contrary.

2. A lawyer has no constitutional right to list the courts in which he is admitted to practice in his advertisements. To the general public it can be deceptive for a lawyer to list the courts in which he practices, for example, the Supreme Court, as did Appellant in this case, since it would lead the layman to believe that he must have some qualification not possessed by other lawyers not admitted there. Such information in no way aids the public in making an intelligent selection of a lawyer or in knowing the availability and prices of routine legal services which was the objective sought in Bates v. Arizona, *supra*. We, also, find it unreasonable to categorize the practice of law as interstate commerce but even if it is, Bigelow v. Virginia, 421 U.S. 809 (1975) is not controlling because not remotely similar to the facts of this case. This rule, if affecting interstate commerce, does so only indirectly and in furtherance of a legitimate State objective.

3. DR2-102(A)(2) Rule 4 of the Missouri Supreme Court is not violative of Appellant's First Amendment rights in limiting the people to whom he can mail an advertisement. Bates, *supra*, held that there could be reasonable regulations as to the time, place and manner of legal advertising. This is a reasonable restriction preventing invasion of privacy which Ohralik, *supra*, held was, also, a legitimate State interest.

4. Recognizing that this Court is the ultimate arbiter in matters involving First Amendment rights the question finally becomes whether this Court is going to adopt a rule which will be applicable to all States requiring uniformity in lawyer advertising. If the rule is to be that advocated by Appellants, i.e. one proscribing only that which is false, misleading or deceptive, who is to make the determination? Have the States, particularly Missouri, not already done that in adopting rules such as DR2-101 and DR2-102 Rule 4? As long as the State's rules are reasonable and tend to further the objective of the free flow of information to the public concerning the availability and prices of routine legal services of lawyers, this Court should leave the matter of regulating the conduct of lawyers to the States and subject such rules to a low level of judicial scrutiny. A broad general rule is difficult of enforcement and has a chilling effect because reasonable people, including lawyers and judges, differ as to what is false, misleading or deceptive. Having established the basic ground rules in Bates, *supra,* Ohralik, *supra,* and In re Primus, 436 U.S. 412 (1977) the Court should now make it clear that reasonable rules regulating lawyer advertising such as the Missouri rule under consideration, admittedly one of the most restrictive and narrowly drawn, will not be held violative of First Amendment rights but a legitimate exercise of the State's right to regulate the conduct of lawyers within its borders where such control has traditionally lain.

ARGUMENT

I. DR 2-101 Rule 4 Of The Missouri Supreme Court Does Not Violate The First Amendment Right Of Free Speech By Restricting Lawyer Advertising Only To Those Routine Legal Services And Areas Of Practice Listed Therein.

When Bates v. Arizona, 433 U.S. 350 (1977) was handed down the Supreme Court of Missouri appointed a blue ribbon committee of outstanding Missouri lawyers to draft rules for submission to the Court governing the conduct of Missouri lawyers in conformance with that opinion. It had before it the two models suggested by the American Bar Association. From the two it chose basically Plan A (A27) with certain modifications. The committee did not agree with the American Bar Plan A which lists 25 categories of information which were considered appropriate in lawyers' advertisement in the printed media. It reduced that list to nine feeling that this was adequate to inform the public of the availability and prices of "routine legal services." The Missouri Supreme Court later increased this list to ten. The court's rule then authorized the advertising of such other services as might be approved by the Advisory Committee. Pursuant to this authority the Advisory Committee approved a list of twenty-three specific areas of law (See Rule DR2-101(A), and DR2-101(B), Rule 4, Supreme Court of Missouri (pages 2-6 of Appellant's brief). This Rule has since been amended to change "Tort Law" to "Negligence Law" and "Family Law" to "Domestic Relations Law."

This was a good faith effort on the part of the Missouri Court to comply with Bates and in our opinion accomplished the objective.

Traditionally, prior to Bates, it had been considered unethical for lawyers to advertise. Bates changed that traditional concept but the question remains in the minds of the Appellant and obviously some others how far this Court intended to go in lowering the bars on lawyer advertising when it rendered the Bates

decision. In the area of lawyer advertising the only cases emanating from this Court since Bates have been In re Primus, 436 U.S. 412 (1978) and Ohralik v. Ohio, 436 U.S. 447 (1978), neither of which dealt with the issue involved here. Following Bates all of the state Courts of necessity wrestled with the problem and modified their rules in some manner, some adopting Plan A, some Plan B of the American Bar and some with ideas of their own. We are informed that 30 states followed one of the American Bar Plans and 38 prohibit direct mailing such as that done by R____ M.J____ in this case. (The National Law Journal, Monday, June 15, 1981, p 14 *et seq.*) The point of this paragraph is that Missouri is not alone in construing Bates as it did, but was joined in its interpretation by a majority of the states.

The Court's admonition in Bates to those regulating lawyer advertising was that it may not be subjected to blanket suppression but could be regulated. (Bates, l.c. 381.) The Court went on at Page 384 to delineate some of the "clearly permissible limitations on advertising" not foreclosed by Bates. They included that which is false, misleading or deceptive but recognized that in the area of lawyer advertising, as distinguished from other commercial speech, because the public lacks sophistication concerning legal services, there might be restrictions not appropriate in other areas. In concluding the majority opinion the Court said that a State may not prevent publication in the newspaper "truthful advertisement concerning the availability and terms of routine legal services." (Bates l.c.384)

Appellants would now have the Court broaden that opinion further to say that the only restriction that the states can make on lawyer advertising is to prohibit that which is false, misleading or deceptive. He relies heavily on Central Hudson Gas and Electric Company v. New York Public Service Commission, 447 U.S. 557, 560 (1980) which had a statement that the Court must determine whether the regulation directly advances the governmental interest, and "whether it is not more extensive

than is necessary to serve that interest." In both Bates and Central Hudson the question was whether the State could completely suppress all advertising, consequently, the statement is of little value or guidance on the issue now before the Court.

The appellate courts of the various states and the lower federal courts have disagreed as to the proper interpretation to be placed on the Bates case making quotations from them lack persuasiveness but a review of the cases and the rules adopted by the courts demonstrates that eminent jurists and legal scholars have divergent views on the subject. For example, the Supreme Court of Tennessee in In re Petition For Rule of Court Governing Lawyer Advertising, 564 S.W.2d 638 (1978) concluded that any advertising of areas of law in which a lawyer practiced would be misleading until and unless specialization was adopted and, therefore, prohibited such advertising pending the adoption of such a rule. It declined to define what "routine legal services" were and, consequently, in effect continued to prohibit advertising in that area, also. The Federal District Court in Durham v. Brock, 498 F. Supp. 213 (M. D. Tenn. 1980) held this prohibition against advertising "routine legal services" violated first amendment rights under Bates. We agree.

Rhode Island also bars advertising of areas of practice but does permit the advertising of "routine legal services" which are expressly set out in the Court's provisional order. Carter v. Lovett and Linder, 425 A.2d 1244 (1981).

In New York the Supreme Court in The Matter of Alfred S. Koffler v. Joint Bar Association, 420 N.Y.S. 2d 560 (App. Div. 1979) held that direct mail solicitation by lawyers might be proscribed. The Court of Appeals In the Matter of Alfred S. Koffler v. Joint Bar Association 51 N.Y. 2d, 432 N.Y.S. 2d 872, 412 N.E. 2d 927 (1980) *Cert. den.* ____U.S.____, (1981) disagreed. The Appellate Division of the Supreme Court had this disciplinary rule before it again in The Matter of Zimmerman v. Office of Grievance Committees, 438 N.Y.S. 2d 400 (1981), this time with regard to advertising the areas of practice in which the

lawyer engaged. Mr. Zimmerman, who was a young lawyer, listed his name under all 23 areas, from Accident to Workmen's Compensation. In spite of the disclaimer the Court held that his lack of experience in many of the areas made such advertising deceptive.

It is notable that among these opinions there are dissents (including the decision in this case in the Missouri Supreme Court) and separate concurring opinions.

Other cases are cited by Appellant further reference to which would only lengthen this brief and serve no useful purpose except further to point out the divergent views and disagreement among the courts.

We can only approach this case from known quantities, those being the principles upon which this court has decided the three cases which have come before it on this general subject. We know from Bates the advertisement of legal services by lawyers is commercial speech protected to some extent by the First Amendment and cannot be proscribed but it can be regulated. We know from Ohralik that because of the commercial nature of the speech involved (Ohralik, *supra,* 426 U.S. l.c. 455-459) and the compelling interest which the States have in regulating lawyers (Ohralik, *supra,* 436 U.S. l.c. 460-462), the Court will subject rules restricting the speech of lawyers in advertising to a low level of judicial scrutiny (Ohralik, *supra,* 426 U. S. l.c. 457). We know from Bates that "the only services that lend themselves to advertising are the routine ones: the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, the change of name, and the like x x x". (Bates, *supra,* 433 U.S. l.c. 372). We know that "there may be reasonable restrictions on the time, place, and manner of advertising." (Bates, *supra,* 433 U.S. l.c. 384). We know generally from Bates, Ohralik and Primus that the primary objective is not to protect the right of a lawyer to speak freely in hawking his wares but to make available to the public information concerning the availability, nature and prices of the services lawyers per-

form in order that it, the public, might make an intelligent selection of a lawyer. It seems that the Court has been rather careful to emphasize that it is talking about "routine legal services" and not the broad spectrum of the practice of law.

Applying these known quantities to the rule under consideration does it go beyond the permissible limits in restricting the Appellant's right of commercial free speech, or in the words of the Central Hudson Case, does it advance "the governmental interest asserted" and "is it not more extensive than is necessary to serve that interest?" Central Hudson Gas and Electric Company v. New York Public Service Commission, 447 U.S. 557, 560 (1980). Does it permit a sufficiently free flow of information to the public aiding the public in the intelligent selection of a lawyer while at the same time protecting the public from deception? We submit that it does meet all these tests.

The areas of law and the routine legal services permitted to be advertised under this rule are certainly adequate to advise the public of what is available and by whom in all common fields of practice. If there is one which is not listed, the Advisory Committee can be petitioned for an addition. We have seen that the Missouri Supreme Court has changed the nomenclature on at least two occasions. It is not written in concrete but is subject to modification upon a proper showing of the advisability of doing so.

Appellant argues that his nomenclature is as good as that of the Advisory Committee or the Court. That may well be but that seems to beg the question. Whether an area should be designated "Tort Law" instead of "Negligence" or "Family Law" instead of "Domestic Relations" is a matter of opinion. The question is whose opinion is to control. We submit that the opinion of the body charged with regulating conduct of lawyers should control, in this instance the Supreme Court acting through the Advisory Committee. It may be narrow in its application but it is certain, understandable and there should be

no difficulty in following it. Following it will not unduly limit the information flowing to the public for its benefit but serves to protect the public from the advertisement of ambiguous or questionable areas of practice not recognizable by the general public.

Since it is a State interest which is being protected this Court should give the State the right to do so, applying a "low level of judicial scrutiny" to rules such as this and invalidating them only if they clearly unduly restrict the flow of information which it is necessary for the public to have in order to be made aware of the availability and prices of routine legal services.

We submit that under the decisions of this Court the Rule of the Missouri Supreme Court regulating advertising by lawyers furthers the objective of Bates and is not violative of Appellant's First Amendment rights wherein it sets out a list of areas of practice and routine legal services which a lawyer may advertise to the exclusion of all others.

II. Appellant Has No Constitutional Right To List In Advertisements The Courts In Which He Is Admitted To Practice.

Appellant argues further that he has a right under the First Amendment to advertise to the general public that he is licensed to practice in various courts. In point II he again argues his right to list any area of law he pleases which we have covered in Point I. Again on this point the States have varied their approach to the problem. The following States apparently do not permit listing the courts in which the lawyer is admitted to practice: Alabama, California, Hawaii, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, North Dakota, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Virginia and Wisconsin. The others do. The following States do not permit advertising a limitation of practice at all or restrict such advertising to the traditional areas of Patent, Trademark and Admiralty and areas of specialization where specialists are

authorized: Alabama, Alaska, Arkansas, California, Connecticutt, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa (may list 3 of 32 approved areas), Kansas (only 3 traditional areas), Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi (very restrictive), Montana, Nebraska, New Hampshire (gives format for limiting practice), New Jersey, New Mexico (not more than 3 areas of limitation), North Carolina (similar to Missouri), North Dakota, Ohio, Oklahoma (expressly prohibits advertising areas of limitation), Oregon (must contain disclaimer), Pennsylvania (same as Oregon), Rhode Island, South Carolina, South Dakota, Tennessee (only those approved by Court), Texas, Utah (Maximum of 5 out of 34 approved areas), Vermont, Virginia, Washington, West Virginia (may use only those approved by West Virginia State Bar and Supreme Court of Appeals) and Wisconsin.

If Respondent is correct in his position that the Bates case stands for the proposition that he may advertise any thing he wants to as long as it is truthful, not misleading or self-laudatory, the Bates case had been misconstrued by virtually every State Supreme Court in the nation.

Although, obviously, some courts see no harm in listing the courts in which the lawyer is admitted to practice, some, including Missouri, did not see fit to approve that as a permissible item of information. We should bear in mind throughout that the purpose of commercial advertising is "to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system", (Bates *supra*, 433 U.S. l.c. 364) "A rule allowing restrained advertising would be in accord with the bar's obligation to "facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available." (Bates, *supra*, 433 U.S. l.c. 377)

Respondent in his advertisement stated that he was admitted to practice before the United States Supreme Court. In what

possible way could this facilitate the process of intelligent selection of an attorney? To how many prospective clients could this information possibly make a difference? Isn't this more in the nature of puffing, a self-laudatory statement, rather than information useful to the lay public in the selection of a lawyer? I dare say that only a small percentage of the lawyers practicing in Missouri have ever had or will ever have the occasion to be admitted to practice before the U.S. Supreme Court, but does that make them any less capable of handling matters that might come before them? We know that admission to practice before the U.S. Supreme Court is a perfunctory matter which most lawyers in the State could accomplish if they so desired. Yet, to the layman this could be quite misleading because it purports to give greater stature and appearance of expertise to the one so admitted over those who are not.

We submit that the Court's rule not permitting the listing of the courts in which the lawyer is admitted to practice in advertising disseminated to the general public is reasonable and designed to facilitate the intelligent selection of a lawyer. Such information in law lists distributed to other members of the profession can be helpful in referrals but can serve no useful purpose, only self-laudation, in advertising to the general public.

We submit that the prohibition of listing the courts in which the lawyer is licensed to practice is a reasonable one and not violative of Appellant's First Amendment rights.

III. The Part Of DR 2-102-(A) Rule 4 Of The Supreme Court Of Missouri Restricting The Persons To Whom Direct Mailing Can Be Made Is Valid And Not Violative Of Respondent's First Amendment Right Of Free Speech.

Count III of the Information before the Missouri Court charged Appellant with allowing professional accouncement cards, announcing the opening of his office to be mailed to persons other than lawyers, clients, former clients, personal friends

and relatives, contrary to DR 2-102(A) of Rule 4. The facts are as outlined in Appellant's statement of the case (p. 7 *et seq.* of Appellant's brief). Obviously, some of the persons to whom this announcement was sent do not fall into the categories set out in the rule. Respondent urges, however, that he has a constitutional right to send such an announcement to anyone he pleases.

We have no argument with the cases which distinguish between advertising and solicitation and agree that the announcement sent by Respondent is an advertisement, not solicitation. We disagree, however, with Respondent's conclusion that Bates or any other decision gives him an unqualified right to send such announcements to the public generally.

Respondent acknowledges that Bates said there could be regulation of "time, place and manner" of advertising. He argues that this regulation is unreasonable, that there is no difference between such information appearing in newspapers or telephone directories and being sent by mail. We submit that there is, indeed, a difference and that the regulation is reasonable.

We believe the difference between mail advertising and other recognized media, such as newspapers, etc. is well set out in the footnote on page 573 *et seq.* of In Matter of Koffler, 420 N.Y.S. 2d 560. We refer particulary to the portion which reads:

"A lawyer's letter commands immediate attention, if not fear. "Junk-mail" from others will often not even meet the respect of being opened; that will hardly ever happen to an envelope bearing indicia that it is from an attorney. It willy-nilly forces itself upon the attention of the recipient whose heart may momentarily flutter (knowing that the lawyer is not his own) until he finds out that nobody is making a legal claim against him. It is a much an intrusion into the privacy of the recipient's home and into his right to be left alone, as would be a taped telephone call from a previously unknown attorney advising of

his availability to perform stated legal services for stated prices, or an enforced personal solicitation by an attorney at his doorstep."

Throughout this footnote the word "advertisement" could well be substituted for the word "solicitation" and be applicable to this situation.

We are aware of the fact that the Court of Appeals of New York disagreed. We submit, however, that the Supreme Court decision is a better reasoned opinion.

Ohralik as well as Koffler recognized the invasion of privacy as an evil to be guarded against and a significant state interest justifying restriction on advertising.

Further in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 771 96 S. Ct. 1817, 1830, 48 L.Ed. 2d 346 it was held that the state may restrict the *manner* of advertising professional services provided that "restrictions of that kind x x x are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in so doing they leave open ample alternative channels for communication of the information".

This rule does allow for ample alternative channels of communication for the information which Respondent wishes to convey to the public. The vast majority of the states have the same restrictions on advertising by mail (Source: The National Law Journal, Monday, June 15, 1981, p. 14) as Missouri does. We submit that it is valid and does not violate Respondent's right of free speech.

IV. Although This Court Is The Final Arbiter Of First Amendment Rights, In Areas Of Doubt Concerning State Regulation Of Lawyer Advertising It Should Defer To The States And Leave The States In The Traditional Role Of Regulating The Conduct Of Lawyers In Their Boundaries.

As we have seen in the previous points the bar and judiciary of the various States are in disagreement as to what is necessary to regulate advertising by lawyers. This does not necessarily mean that any of them are wrong, just different. Perhaps we are all eventually saying the same thing, i.e. that lawyers may advertise anything that is not false, misleading or deceptive but our difference comes in determining what falls within these categories. The Missouri rule rigidly says that you may do certain things and no other. A great many other States do the same. Others such as New York decide on a subjective basis whether something is deceptive, etc. In Alabama a copy of the advertising material must be sent to the Grievance Committee within 3 days after its publication, then, ex post facto, the committee determines whether it is deceptive, etc. Foley v. Alabama State Bar 481 Fed. Supp. 1308 (D.C. N.D. Ala., 1979). This was held not be a prior restraint or otherwise violative of First Amendment rights.

These are different approaches to the problem but we believe not as satisfactory as knowing in advance what can and what cannot be done. The ex post facto determination surely would have a very chilling effect upon advertising not present under clearly drawn rules.

Because lawyer advertising is commercial speech entitled to some protection but not as much as other speech and considering the traditional role of the States in regulating the conduct of lawyers within their borders, we submit that this Court should subject rules such as DR2-101 and DR2-102 Rule 4 of the Missouri Supreme Court to "a low level of judicial scrutiny" and hold them violative of the First Amendment only if they clearly and unduly restrict the free flow of information to the public concerning the availability and prices of routine legal services thereby leaving the States in their traditional role of regulating lawyers.

CONCLUSION

The judgment of the Missouri Supreme Court should be affirmed and costs assessed against the Appellant.

Respectfully submitted,

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Office - Supreme Court, U.S.
FILED
OCT. 28 1981
ALEXANDER L. STEVAS
CLERK

No. 80-1431

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APPELLANT'S REPLY BRIEF

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No. 80-1431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF R_____ M. J_____

Appellant

On Appeal from the Supreme Court of Missouri

APPELLANT'S REPLY BRIEF

FOREWORD

We recognize the limited purpose of a reply brief. This one is longer than most for two reasons, as follows: (1) the court below did not attempt to justify the challenged rules by constitutional standards, but simply announced a conclusion, so that, in appellees' brief, we are presented with the first essay at justification; and (2) several decisions involving constitutional challenge to legal advertising have been handed down since our brief was written.

ARGUMENT

I.

A Rule Listing The Only Permissible Items Of Advertising, And Forbidding All Others, Is Constitutionally Infirm.

The appellees are distinctly helpful in defining the issues by making it clear that the rule they seek to defend, as supplemented by the Advisory Committee Addendum, "rigidly says that you may do certain things and no other," (p. 14, discussing DR 2-101-(B)), and that it "sets out a list of areas of practice and routine legal services which a lawyer may advertise to the eclusion of all others." (p. 9.) If the lawyer advertises anything at all outside of the prescribed categories he is subject to disciplinary action and possible loss of his license.

We are told in justification that the eminent lawyers who drafted the rule, the Judges of the Supreme Court of Missouri, and the Advisory Committee have determined that the permitted items are "certainly adequate to advise the public of what is available and by whom in all common fields of practice." (Ibid., p. 8). The draftsmen began with the list of 25 items included by the American Bar Association in its Proposal A,[1] and then cut this list to 9, (later increased by the court below to 10), being of the opinion that the listed items were adequate to inform the public "concerning the availability and price of routine legal services of lawyers." (Ibid, p. 3.) Appellees express the opinion that the rule "...will not unduly limit the information flowing to the public for its benefit." (Ibid., p. 9.)

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[1] For the text of Proposal A see Lori B. Andrews, *Birth of a Salesman: Lawyer Advertising and Solicitation,* (A.B.A. Press, Rev. Ed, pp. 97ff.) In Bishop v. Committee on Professional Ethics, F. Supp. (U.S.D.C.S.D. Iowa, Civil #81-47-D, August 20, 1981), the court held a Plan-A type rule invalid to the extent that it precluded a lawyer from listing his race, which the court found was a factual matter which might be of interest to members of the public.

This rule institutes a concept of regulation wholly at variance with the First Amendment. It has nearly all of the vices of an absolute prohibition, such as was condemned in *Bates* v. *State Bar of Arizona,* 433 U.S. 350 (1977.) That a partial prohibition is no more valid than a total prohibition is shown by *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council,* 425 U.S. 748 (1976), which involved a prohibition only on the advertising of prices of prescription drugs, and with *Central Hudson Gas and Electric Company* v. *New York Public Service Commission,* 447 U.S. 557 (1980), in which the challenged regulation prohibited only that advertising promoting the consumption of electricity.[2]

There is, furthermore, no precedent for a scheme of regulation of protected sppech in which the regulatory authorities, rather than the speaker, choose the language which may be used. The Missouri rule is truly a rule of censorship and prior restraint.

II.

The Regulatory Authorities Have The Burden Of Justifying Restrictions On Lawyers' Truthful And Factual Advertising.

The appellees at page 7 suggest that there is a legal rule to the effect that "this Court will subject rules restricting the speech of lawyers to a *low level of judicial scrutiny.*" (Emphasis supplied,) citing *Ohralik* v. *Ohio,* 436 U.S. 447, 457 (1978), in support of the proposition. The italicized phrase is repeated on pages 3, 9, and 14 of appellees' brief, with the last two insertions in quotation marks as though to suggest that the phrase emanated from the opinions of this Court.

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[2] Appellees incorrectly state (page 6) that the question in Central Hudson was "whether the State could completely suppress all advertising."

The italicized phrase is actually a distortion of the language appearing at page 457 of *Ohralik*, in which it is said that if there is a "business transaction in which speech is an essential but subordinate component," this circumstance "*lowers* the level of appropriate judicial scrutiny." (Emphasis supplied.) Not only is the language of the opinion distorted; it is manifestly taken out of context. This case does not involve a business transaction between two parties as Ohralik did.

This case is distinguished from *Ohralik* in that the in-person solicitation there involved exerted pressure and demanded an "immediate response without providing an opportunity for comparison or reflection." 436 U.S. at 457. As such, although presumptively protected, the speech was subject to prophylactic regulation to further the important state interest of preventing "fraud, undue influence, intimidation, overreaching, and other forms of 'vexatious conduct,' " in "circumstances likely to result in the adverse consequences the State seeks to avert." (Id. pp. 462, 464.)

Appellant's speech here, like that in *Bates* and unlike that in *Ohralik*, was "pure" commercial speech, in that it was not in any sense coercive. No pressure was exerted; no immediate response was demanded; ample time existed to measure appellant's speech against speech from other sources. Accordingly it was entitled to the protection afforded in *Bates* and *Central Hudson*. *Central Hudson*, in particular, holds that "limitations on expression must be designed carefully to achieve the state's goal," (564), and must be "narrowly drawn."[1] The burden is on the would-be regulator to demonstrate that "its interest cannot be protected adequately by more limited regulation of ap-

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[1] In re Primus, 436 U.S. 412, 438 (1978); Central Hudson Gas and Electric Corporation v. New York Public Service Commission, 447 U.S. 557, 560 (1980). The appellees engage in a play on words in their Summary of the Argument, p. 3, in describing the Missouri rule as "narrowly drawn." Restrictive the rule is, but narrowly drawn, in the Primus-Central Hudson sense, it is not.

pellant's commercial expression." Neither the court below nor the appellees here make the slightest attempt to meet this burden.

III.

Missouri's Regulations Cannot Be Justified Simply Because They Might Make The Task Of Regulation Of Lawyer Advertising Easier.

Appellees try to justify the Missouri rules by arguing that a highly restrictive rule, by its very restrictiveness, will operate to prevent misleading advertising. (pp. 9, 11) and will ease the burdens of administration and enforcement. Both of these arguments were emphatically rejected in *Bates*, when offered in justification of a rule of total prohibition. These same arguments are no more appropriate when offered in support of a partial prohibition.

The state may regulate freedom of expression by means of a prophylactic rule only when the evil sought to be deterred is "likely to result" from the proscribed speech. *Ohralik*, p. 464. The dangers Bates seeks to avoid, however, are not "likely to result" from the appellant's truthful, non-coercive, written speech. *Bates*, so holds.

The complaints in the Texas amicus brief are inappropriate, for Texas has not availed itself of available means for regulation by amending its rules in the light of *Bates*. It has simply suspended them insofar as they conflict.[4] There is not a single report of a Texas disciplinary action for advertising since *Bates*. The appended advertisements contain much factual material which is undoubtedly protected. The authors seem concerned lest debtors be alerted to statutes existing for their benefit. The objectionable features detailed on page 5 could be regulated by appropriately narrowly drawn rules, which have not even been tried.

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[4] Andrews, *op. cit.*, p. 146, f.n. 6.

IV.

The First Amendment Protection For Lawyer Advertising Is Not Confined To The Advertising Of Routine Legal Services.

In appellees' argument that *Bates* sanctioned only the advertising of "routine legal services," (pp. 7, 8, 9), the partial quotation on page 7 is taken out of context. (*Bates,* l.c. 372). The Court at that point was talking about advertisement of the charges for legal services. This issue was one of the most troublesome in Bates and one on which the members of the Court were sharply divided. Nothing in the *Bates* opinion provides any support for the proposition that lawyers may be prohibited from advertising legal services which are other than routine. The advertising which *Bates* protects is advertising which is truthful and not misleading and which might be helpful to the consuming public.

The Missouri rule, furthermore, does not confine permissible advertising to that which is routine. The Addendum expressly permits the advertising of practice in such non-routine areas as Antitrust Law, Eminent Domain Law, Financial Institution Law, Labor Law, and Public Utility Law.[3] Not a word is offered in justification of the inclusion of these areas while the appellant is forbidden to list areas in which he holds himself out as available. The First Amendment does not countenance a selective regulation of freedom of expression, in which some expres-

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[3] A recent decision of the United States District Court for Rhode Island, Lovett and Linder, Ltd. v. Carter, F. Supp. , 50 U.S. Law Week 2193, September 8, 1981, holds that a state may forbid a "laundry list" of areas of law practiced, even though there is a disclaimer. We submit that this holding is inconsistent with Central Hudson, in that a lawyer has the constitutional right to advertise available services and the state's purpose of preventing deception can be accomplished by less restrictive means. Cf. Durham v. Brock, 498 F. Supp. 213, (M.D. Tenn., 1980), The Rhode Island case does not help the appellees because Missouri imposes no limit on the number of areas of law that may be listed, so long as the approved phraseology is used, and does not require training or experience in any area listed.

sion is permitted while other expression of the same quality is prohibited. See *Metromedia, Inc.* v. *City of San Diego,* U.S. , 101 S. Ct. 2882 (1981).

V.

Missouri Provides No Procedure For Application To The Advisory Committee For Permission To List A Field Or Area Of Law Which Is Not On The Approved List.

We were surprised by the assertion at page 8 of Appellees' brief that "if the list of fields or areas of practice is incomplete, the advisory committee can be petitioned for an addition," because the record in this case shows that, on December 16, 1977, the Appellant expressly requested the Advisory Committee to approve his display advertisement containing areas of practice which were not on the approved list. (A-14, Stip., Exh. 6). The letter in response said curtly that "the rule requires only the use of the specific phraseology adopted by the Advisory Committee." (A-15, Stip, Exh. 7.) We called this to the attention of appellees' counsel, who now authorizes us to state that our reading of the record is correct and that no claim that the appellant failed to exhaust any state remedies is being advanced.

It is a matter of public record, furthermore, that another Missouri lawyer applied to the Advisory Committee for permission to say that he practiced "Social Security Disability Law," Neither this field nor anything close to it is listed in the Addendum. (Appt. Bf., p. 4.) The Advisory Committee denied the request, summarily and without explanation, and he filed a declaratory judgment action in a state court. The Advisory Committee moved to dismiss the action on the ground that there was no "actual controversy," and the court sustained the motion on the basis that the plaintiff had not actually sought to place an advertisement and had not been cited by the Advisory Committee.[4]

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[4] Gann v. Missouri Bar Administration Advisory Committee, #CV78-3779, Circuit Court of Jackson County, Missouri, unreported opinion of Bondurant, J., February 22, 1979.

The rules of the Supreme Court of Missouri establish no procedure for application to the Advisory Committee for permission to list a field or area of law which is not on the Committee's list,[7] and the Committee itself has established no such procedure. The Committee seems intent on avoiding a test by a lawyer unless the lawyer is willing to put his license on the line in a disciplinary action. This approach chills freedom of expression and necessarily deprives the public of potentially valuable information about available legal services.

The Committee has provided absolutely no explanation, either at the time its Addendum was promulgated or in the record of this case, as to why it listed certain fields and excluded others, or why it chose certain descriptive language to the exclusion of other possible language. We would admit the possibility that a state which certified legal specialists (which Missouri does not) might require that the specialities be described in the exact language of the certificate.[8] That is not the present case. In a rule in the Missouri format there is absolutely no justification for denying a lawyer the opportunity to list a field of law in which he holds himself out as available, or for requiring the lawyer to use certain descriptive language rather than other language which one might consider more informative or more meaningful.

VI.

Appellant Is Not Charged With False Or Misleading Advertising.

The appellees' description of the case of *Zimmerman* v. *Office of Grievance Committee,* 438 NYS 2d. 400, (N.Y. App.

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[7] Missouri has no counterpart of DR 2-101(C) of ABA Proposal A. See Andrews, *op. cit.*, p. 104.

[8] We would not concede that the lawyer could not add explanatory material, such as "admiralty has to do with the sea, ships and sailors."

Div., 1981) is not accurate. Further consideration of that case is helpful because it demonstrates a proper approach to the regulation of lawyers' advertisements. A telephone company established a section of "Lawyers Grouped by Practice" in the Yellow Pages. Any lawyer willing to pay the price could list his name under any or all of the 25 separate headings, and the lawyer in question did just that. The lawyer also listed himself under his given name of Aaron rather than under his surname, in order to move himself up in the alphabetical ladder. He was expressly charged with "false, deceptive or misleading" advertising in violation of New York's DR 2-101-(A), which is essentially the same as the Missouri rule (Appt. Bf., p. 2). The court found: (1) that the listing of a name under a particular heading constituted a holding out of competence and experience in that area, and (2) that, inasmuch as Zimmerman, with about three years of practice, admitted that he had no experience in some of the areas listed, his advertisement was misleading. The case, then, involved an express finding of fact which was not made in the case at bar, and could not be made under the charges and evidence (See Point VII, infra). We see no reason to speculate as to the correctness of the New York court's factual finding because this case is totally different, substantively and procedurally, from that one.

Nor do we have to speculate as to the validity of a restriction on the number of areas a lawyer may list, or on a requirement of training or experience in the areas listed, since no rule involving such restrictions as before the Court. Missouri does not limit the number of areas a lawyer may list, so long as the Advisory Committee's language is used. It relies on the disclaimer rather than on any requirement of training or experience in the listed areas.[9]

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[9] Note 5, *supra*.

VII.

A Blanket Prohibition May Not Be Used To Justify Regulation Of A Particular Item.

Appellees' suggestion that the perfectly true and totally factual statement that the appellant is "admitted to practice before the United States Supreme Court" may amount to "puffing" or may be a "self-laudatory statement" interjects an issue which this Court does not have to reach. The item is of a kind which is regularly publicized by lawyers.[10] It is no more self-laudatory, and much more germane to the furnishing of legal services, than is other information permitted by the Missouri rule, such as the listing of colleges and degrees. The rule, for example, allows a lawyer to say that he had a Ph. D. in Philosophy from the Sorbonne, if such is the fact. There is, furthermore, no express prohibition of the mention of this Court, and no indication that the case would be in a different posture if admission to this Court had not been stated in the ad. The rule forbids the listing of any courts (since it does not expressly permit this information in advertisements.) The appellees have the burden of justifying this prohibition, and have offered only the suggestion that the authorities did not think that the information about courts of admission would be helpful to potential clients.[11]

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[10] Over 100 St. Lawyers advertise that they are members of the bar of this Court in the biographical section of the 1981 Martindale Hubbell Legal Direction, in which advertising space may be purchased. The publication is freely available in public liabraries.

[11] We submit that the list on page 10 of appellees' brief, of states which assertedly forbid lawyers to list the courts in which they are admitted to practice, is not correct. Appellees advise us that they compiled this list from copies of the state rules filed in the court below, and that no effort has been made to bring the data up to date. Verification is impossible for lack of citation, but we suspect that many of the rules so filed were pre-Bates rules. The most current compilation of information about state rules is found in the 1981 edition of Andrews, *op. cit.* This shows that seven of the states listed by appellees now follow

The appellant, moreover, is not charged with making self-laudatory statements, which are expressly forbidden by DR2-101-(A). Had appropriate charges been filed there could be a trial on the facts and the law, and perhaps a test as to the constitutional validity of a prohibition on self-laudatory statements, or as to whether that term is sufficiently definite. In this case, however, the mere listing of "courts" is charged as a violation.

The appellees' attempt to support a general prohibitory rule by asserting that a particular item might be questioned runs afoul of the injunction of *Central Hudson* that restrictions on commercial speech must be "narrowly drawn," in terms of the specific evil apprehended.[12] The majority opinion there indicated that a narrowly drawn rule which forbad advertising tending to promote electricity consumption at peak hours might pass constitutional scrutiny. The Court nevertheless invalidated the rule before it in the particular case on the ground that it went beyond the necessities of the situation. If the appellees approach were accepted then a state could adopt the broadest possible regulatory rule and could then quibble about any detail of an advertisement which might be displeasing to the regulatory authorities. This form of regulation is clearly foreclosed by Central Hudson.

Appellees try to support the total ban on the listing of courts by arguing, first, that other states have similar rules[13] and, second, that the distinguished lawyers who drafted the Missouri rule "did not see fit to approve the listing of courts such as

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ABA Proposal B, which specifies what is forbidden in advertising rather than that which is permitted. Andrews, *op. cit.*, pp. 117ff, 136-46. Nine others follow Proposal A which, in its initial form, expressly permits the listing of courts of admission. *Ibid.*, pp. 117ff, 136-46. We are aware of no rule which specifically prohibits the listing of courts of admission.

[12] Note 3, *supra.*

[13] But see Note 11, *supra.*

other states permit." (p. 10). We will not repeat the arguments in our main brief as to why listing of courts would be helpful to the public, especially in a bi-state telephone directory, but will add the additional observation that the Missouri rule would prevent a lawyer from, advertising the fact that he is admitted to practice in the local United States District Court. Such information might be very helpful to a person who had a potential claim under a federal statute such as the Age Discrimination in Employment Act, 29 USC Sec. 621-634; the statute protecting against false odometer readings, 15 USC. Sec. 1891; or the Fair Credit Reporting Act, 15 USC Sec. 1681. Potential claimants might have no acquaintanceship with any lawyer, and might want to know who would be available to serve them.

VIII.

Restrictions On Mailed Advertisements Cannot Be Justified On The Basis Of The "Privacy" Interest.

Appellees, in support of the general prohibition on mailed advertising, refer only to the "privacy" interest, and cite *Ohralik* in support. That case did not in any sense turn on privacy concepts. The word "privacy" appears in the opinion only once, at page 461, in a summary of the arguments made in the American Bar Association's amicus brief. The Court, in the next paragraph, said that it did not have to pursue analysis along the lines suggested by A.B.A. The Ohralik holding was based on the potential for overreaching, as more fully discussed in Point II above.

The assumed privacy interest of members of the public is a dubious justification for a general restriction on First Amendment rights. In *Cohen* v. *California,* 403 U.S. 15, 21 (1971), the Court required a "showing that substantial privacy interests are being invaded in an essentially intolerable manner" to justify restriction on otherwise protected speech.

This is especially so when the mails are involved. The Court's latest word is found in *Consolidated Edison Company* v. *Public Service Commission,* 447 U.S. 530, 541, 543 (1980), in which it is said that "all persons are free to send correspondence to private homes through the mails ..." and that householders are amply protected by their power to ignore or discard undesired advertisements.

The footnote appellees rely on from *Koffler* v. *Joint Bar Association,* 420 NYS 2d. 560, (App. Div., 1979), reversed 412 NE 2d. 977 (1980), cert. den. U.S. (1981), strikes us as the ultimate in fantasy. We never though that we might frighten addressees by using office stationery for personal or political correspondence. In the present case, moreover, the appellant's announcements were mailed in a plain envelope (A-25, Stip. Exh. 11), such as is usal for announcement cards. The Appellate Division, furthermore, based its conclusion on a finding that there was solicitation, and would have permitted the mailing of a mere advertisement. Appellees admit that the mailing of the appellant's announcements did not constitute solicitation.

We have yet to see a post-*Bates* rationalization for the addressee limitations of DR 2-102(A)(2), which apparently has not been amended in Missouri and elsewhere in the light of *Bates.*[14] Absent such justification, the rule manifestly must fall under the weight of Central Hudson.

IX.

Rules Of Other Jurisdictions Do Not Supply Substantial Constitutional Authority For The Challenged Rules.

Appellees inaccurately characterize our contention as being that no rule regulating legal advertising would be valid, other than a rule "proscribing only that which is false, misleading, or

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[14] Another case holding that a prohibition on mailed advertising is unconstitutional is Bishop v. The Committee on Professional Ethics, F. Supp. , (D.C.N.D. Iowa, Case #81-47, August 20, 1981.)

self-laudatory," (p. 3.) At page 11 it is said that if *Bates* stands for the proposition that a lawyer may advertising anything which is "truthful, not misleading, or self-laudatory," then "the Bates case has been misconstrued by virtually every State Supreme Court in the nation." In so arguing they misunderstand our argument and do not correctly reflect the state rules.

What we do contend is that lawyers' advertising which is truthful, factual and not misleading constitutes protected speech under the First Amendment. As such it may be restricted only for a substantial reason and, even then, only by the least restrictive means adequate to the end. The burden of justifying the regulation is on the regulator. We would not argue that everything which is truthful may be advertised. State authorities well might believe that lawyers should not advertise the size of verdicts obtained or the number of acquittals secured. A specific rule against the advertising of "results" would be methodologically proper under *Central Hudson,* since it is narrowly drawn to meet an apprehended evil. Missouri's rules are not so limited.

As for the state of legal authority, judicial rule making is not litigation through the adversary process and does not give rise to precedent. We are aware of no articulated justification for a rule on the Missouri model, with analysis in terms of *Bates* and other controlling authorities. The cases which have come into litigation support our position overwhelmingly.[13]

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[13] To the cases cited on page 21 and in footnote 11 of our main brief should be added Foley v. Alabama State Bar, 648 F. 2d. 355, (5th Cir., 1981) and Bishop v. Committee on Professional Ethics, Note 14, *supra.* Appellees' cited case of Carter v. Lovett and Linder, Ltd., 425 A. 2d. 1244, (R.I., 1981), is contrary to our position in holding that a rule permitting advertising in the "Yellow Pages" requires that the pages be yellow and forbids advertising on the inside back cover of a telephone directory, but this strange holding was expressly disapproved in Lovett and Linder, Inc. v. Carter, (D.C.R.I.,) Note 5 *supra.*

We again question the accuracy of appellees' tabulation of of state rules on pages 9 and 10 of their brief. Twenty states have adopted American Bar Association Proposal B, or a rule on that model.[16] This form of rule does not list that which is permissible, so as to preclude everything else. There is no consensus along the lines that appellees argue.

Many states, furthermore, have taken a patently evasive approach to the problems of legal advertising. Lori B. Andrews of the American Bar Foundation, in her systematic study of legal advertising following Bates, observes as to some state rules as follows:[17]

> "...many of these rules restrict attorneys from advertising the type of information that would be most useful in helping the average citizen decide whether his problem required legal services and who best could provide those services. ... *The restrictive view of the state rules is heightened by the fact that the very ad in Bates would not be permissible in 27 states and under the ABA Model Code.*" (Emphasis supplied.)

Professor Lawrence K. Hellman, in an article analyzing the Oklahoma post-*Bates* rules, which are similar to Missouri's in some respects, comments as follows:[18]

> "Some proposed responses to Bates seem designed more to thwart advertising by lawyers rather than to permit it."

The state rules, then, simply do not provide substantial constitutional authority.

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[16] Note 11, *supra.*

[17] Andrews, *op. cit.*, p. 43

[18] Hellman, "The Oklahoma Supreme Court's New Rules on Lawyer Advertising: Some Practical Legal and Policy Questions," 31 Okla. L. Rev. 509 (1978).

The American Bar Association has apparently rethought its position. Its latest proposal for a Model Code abandons the notion of prescribing the only permitted content of legal advertisements and prohibiting anything else, with a comment as follows:[19]

> "Attempt at such specification assumes that the bar can identify information that the public might think relevant. The code list has been criticized as unnecessarily restrictive."

Authentic constitutional guidance must be found in this Court's decisions and not in the state rules. The Missouri approach deprives the public of useful information, and is not necessary to protect the public. Effective regulation can be had through the use of narrowly drawn rules along the lines suggested in Part IV of the *Bates* opinion, and followed in many states.[20]

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[19] Proposed Final Draft, Model Rules of Professional Conduct, American Bar Association Commission on Professional Standards, May 30, 1981, p. 188; *Ibid.*, Alternate Draft, p. 27. See 67 *American Bar Association Journal*, pp. 1117-1118. (Sept., 1981).

[20] Andrews, *op. cit.*, lists 20 states which have adopted ABA Proposal B, at pp. 136-146. See Note 11, *supra.*

CONCLUSION

The judgment should be reversed. Costs should be assessed against the appellees.

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Office-Supreme Court, U.S.
FILED
JUL 16 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1431

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

IN THE MATTER OF R.M.J.,

Appellant

On Appeal From The Supreme Court
of Missouri

BRIEF OF AMICUS CURIAE THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF APPELLANT

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No. 80-1431

SUPREME COURT OF THE UNITED STATES
October Term, 1980

IN THE MATTER OF R.M.J.,
Appellant

On Appeal From The Supreme Court
of Missouri

BRIEF OF AMICUS CURIAE THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF APPELLANT

STATEMENT OF THE CASE

This is a lawyer's appeal from a disciplinary proceeding in which the Supreme Court of Missouri imposed a private reprimand and sustained all four Counts of a disciplinary Information. 609 S.W.2d 411.

Appellant was charged by the Advisory Committee of the Missouri Bar with four separate violations of Rule 4 of the Missouri Court, its Code of Professional Responsibility. All were violations of the Disciplinary Rules concerning lawyers' advertising, particularly DR 2-101(B), respecting advertising in the printed media, and DR 2-102(A)(2), respecting professional announcements. The Rules in question are those adopted, or reaffirmed, by the Missouri Court "to implement the teachings" of this

Court's Bates decision, in 1977. 609 S.W.2d 412.

One of the Rules allegedly violated, DR 2-101(B)(2), gives the Missouri Court's disciplinary sanction to an "Addendum" promulgated by the bar Advisory Committee pursuant thereto. That potentially beneficient, flexible method of regulation seems to have been made the vehicle for excessively restrictive substantive regulation, and it is the substance, not the method, that is challenged here.

The four Counts against Appellant were the subject of a brief hearing before the Advisory Committee, which produced a Stipulation that constitutes the entire factual record.

Count I is based upon an advertisement published in a local newspaper in the St. Louis suburbs, the West End Word. The advertisement was placed before the Addendum was published, although it appeared after the new Rules and Addendum became effective on January 1, 1978.

Count II involves a substantially identical advertisement placed in a 1978 suburban St. Louis yellow pages directory. It also was placed before the Addendum became public.

Count III charges the mailing of "professional announcement cards," entirely proper in form, to persons not personally known to appellant, apparently associates of his wife. This is the only Count under DR 2-102 rather than DR 2-101.

Count IV involves an advertisement in a later yellow pages directory, that for Greater St. Louis, which cir-

culates in Illinois as well as in Missouri. (Appellant is licensed in both states.) The advertisement was modified from those involved in Counts I and II only in that it contained a disclaimer of certification of expertise in the areas of practice listed, required by the Addendum.

None of the Counts includes any allegation that appellant's publicity included a false or misleading statement or implication. The specific grounds of the charges are described in the relevant portions of the Argument below.

Appellant's careful and respectful constitutional objections to the charges against him were disregarded by the Missouri Court, which imposed minimal discipline because it saw this as "a 'test' case" involving minimal violations of its disciplinary code. 609 S.W.2d at 412. This Court noted probable jurisdiction on June 1, 1981.

STATEMENT OF INTEREST

The Association of Trial Lawyers of America is a voluntary, nationwide organization of over 40,000 members, including several hundred in Canada and other foreign countries. Its membership includes judges and law teachers, but primarily consists of lawyers who specialize in litigation, and particularly in the representation of plaintiffs in civil cases involving injuries and death to people and damage to property.

The nature of its members' practice gives the Association a strong interest in striking down restraints on

what lawyers may truthfully say about what they do. The Association was most recently an amicus in this Court last term, in Gulf Oil Co. v. Bernard, No. 80-441, ____ U.S.____, supporting the right of the lawyers for a class-action plaintiff to communicate freely with other members of the class.

The typical member of the Association has few, if any, institutional clients. His or her clients are mostly one-time users of the court system, whose need for legal services arises from the traumatic experience of serious injury, loss of property, or the sudden death of a bread-winner. These are people in need of help, sometimes aptly called the victims of modern industrialized society. Recent surveys indicate that many of them do not use lawyers because they cannot identify the kind of lawyer they need, because of the type of limitation on what lawyers may try to communicate to them that is involved in this case.

Because of such limitations, such people are often unable to assert their legal rights. They are deprived not only of their right to receive information under the First Amendment, but also of their right to effective counsel, guaranteed by the Fifth and Sixth Amendments.

The Association thus appears here out of a deeply felt enlightened self-interest, seeking to vindicate the right of the prospective clients of its members to receive information that will be useful to them in obtaining and selecting counsel.

The Association is also directly interested in this

case because the appellant is a member of the Association. That fact was disclosed to the Association Amicus Curiae Committee that authorized the filing of this brief. The Committee's action was not, however, sought by the appellant, but by Association officials whose interest in the case was unrelated to appellant's Association membership.

SUMMARY OF ARGUMENT

This appeal involves the constitutionality of two Disciplinary Rules of the Supreme Court of Missouri regulating advertising by Missouri lawyers, and of an Addendum to one of those Rules, adopted by the Advisory Committee of The Missouri Bar. Both the Rules and the Addendum appear calculated not to regulate lawyers' advertising, so much as to prevent it. The disciplinary proceeding which led to this appeal suggests that the bar authorities of Missouri want the clock turned back to the time when new lawyers in town could not compete for consumers' legal business by advertising the availability of their services. Both the provisions under review, and the Missouri Court's opinion upholding them, demonstrate an unwillingness to adapt to the new era initiated by this Court's Bates decision of 1977.

Missouri's lawyer-advertising rules are overly broad prohibitions, because they authorize so narrow a spectrum of expression. The Rules put a straight jacket on lawyer's communications with the public, and thus restrict not only

the exercise of lawyers' First Amendment rights of commercial speech, but also the prospective client's access to the effective assistance of counsel. Missouri lawyers are allowed to advertise, but not to advertise effectively. There is nothing about the appellant's conduct that suggests an intent to overreach, or to mislead, prospective clients. He is being disciplined for essentially petty mala prohibita, and for violating prohibitions that have little or no relationship to the purported purpose of protecting the public. Those prohibitions infringe the right of every potential client in Missouri to receive useful information about legal services, and should be struck down.

ARGUMENT

MISSOURI'S RESTRICTIONS ON TRUTHFUL LAWYERS' ADVERTISING EXCEED THE STATE'S NEED TO REGULATE SUCH COMMERCIAL SPEECH, AND INFRINGE ON THE EXERCISE OF THE RIGHT TO COUNSEL.

This case raises four issues or sets of issues:

1. Whether a state may prohibit its lawyers from mailing routine, dignified professional announcements except to persons with whom they are personally acquainted, or to whom they are related. (Count III.)

2. Whether a state may prohibit a lawyer

from publicizing the fact that he or she has been admitted to practice in a court, or system of courts, admission to which is not common to all lawyers of the state. (Counts I, II, and IV.)

3. Whether a state may prohibit its lawyers from advertising describing the areas of law in which they practice, except in a form of words dictated by the state. (Counts I, II, and IV.)

4. Whether a state may require all its lawyers who wish to advertise the areas of law in which they particularly specialize or concentrate their practice, to include in each such advertisement a disclaimer of "certification of expertise" in a form dictated by the state. (Counts I and II.)

Those issues arise only obliquely from the judgment and opinion of the Missouri Court. That Court refused to rule on the constitutional validity of any of the ethical rules challenged by appellant, or even to decide whether, as a matter of state law, it would refuse to sustain some of the charges. It thus implicitly sustained all of the charges against appellant.

The Missouri Court also, however, imposed on appellant only a private reprimand. That is the most minimal of disciplinary sanctions, which suggests that the Missouri Court's judgment may be affirmed should this Court

determine that any one of the charges against appellant may be sustained. Those charges must, however, undergo a peculiarly searching scrutiny. They are obviously subject to the four-pronged test for state regulation of commercial speech, announced last year in Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557. They should be examined particularly closely, moreover, because the commodity to which they relate is also constitutionally protected--the assistance of counsel, without which the right to petition for redress of grievances may often be an empty shell.

I. The Professional Announcement Count

All of Missouri's charges rest on two doctrines: first, that even political speech may be subjected to reasonable limitations as to time, place, and manner, and second, that commercial speech may be regulated by somewhat more draconian, prophylactic measures if the classification of speech that is prohibited is reasonably likely to deceive or mislead. The latter doctrine undergirds both Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), and Friedman v. Rogers, 440 U.S. 1 (1979), where the Court upheld Texas' ban on practicing optometry under trade names.

The charge here that most clearly depends on these doctrines is that based on appellant's mailing "tombstone" announcements, by first class mail, to persons with whom he was not personally acquainted. The Missouri Bar

apparently concedes, as it must, that appellant's announcement cards were proper as to content. The Bar does not allege that mailing the cards violated DR 2-102(A) in any way except the identity of the addressees. It is not even alleged that appellant's cards were not "in dignified form;" the text is so bland that it could apparently be published in a newspaper without violating even Missouri's version of DR 2-101.[1]

The gravamen of Count III is that appellant mailed the most innocuous of all forms of professional advertising to someone he did not know. The Stipulation suggests that most of the people who received the cards and did not know appellant, knew his wife. Whether they knew of appellant, without being personally acquainted, is not of record.

Appellant claims the right to mail such cards to anyone at all. It is difficult to imagine the state interest that is served by preventing him from doing so. The only purpose the prohibition apparently serves is to protect other lawyers from losing clients to appellant. The likelihood that so proper a communication could effect such a seduction would seem dim.

The rule is patently an archaic artifact of the British tradition that all barristers are gentlemen, who can subsist without charging for their services. It pro-

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[1] Appellant was not, however, charged with violating DR 2-103 by the mailing, on the theory that it was "advertising"not allowed by DR 2-101. See In re Ruffalo, 390 U.S. 544 (1968). Thus no such theory is before the Court.

scribes sending professional notices to anyone who is not reasonably likely to know of a lawyer's change in circumstances. The degree of consanguinity for "relatives" is not specified; nor does the Missouri Court tell us whether it allows notices to be sent to the relatives of one's spouse, but not to his or her "personal friends." That term also has a peculiarly subjective elasticity; it would penalize the fastidious lawyer, who differentiates between "friends" and mere "acquaintances," but not the glad-hander.

The rule also inherently discriminates against the sole practitioner, such as appellant, and in favor of the larger firm. It allows every member of the large firm to send notices to friends, relatives, and former clients, subtly reminding them of his or her existence, whenever the firm's personnel changes, or it opens new offices in new cities. It lets sole practitioners do so only when they establish their offices, move their offices, or change their telephone numbers. Its purpose and effect are both blatantly anti-competitive; it is intended to protect other members of the profession, not to protect the public.

There is no danger of overreaching by such communications as professional announcements. Indeed, the dangers of in-person solicitation, on which the Court relied in Ohralik, are mostly dissipated whenever the communication is written or printed, whether it is mailed, delivered by messenger, or published in a newspaper. There is no problem determining exactly what was said, or

in what tone of voice, or with what enticing or threatening pauses or gestures. The very communication itself is available for evaluation and analysis.

One may readily imagine situations in which a professional announcement card would be useful to a person who does not know the announcing lawyer. Many other tenants in the same office building or shopping center, or even near-by residents, might well be delighted at the prospect of having a lawyer next door, rather than downtown. Some of them would miss an advertisement in a local publication such as the West End Word, and few would consult the yellow pages without a present need for legal help. The rule prohibits appellant from making known to such people his presence among them, in a direct, ethical, and dignified way, unless he already knows them.

This case does not even involve a communication suggesting the need for legal services, such as the New York Court of Appeals authorized (reversing a lower court) in Matter of Koffler, 51 N.Y.2d 140, 412 N.E.2d 927 (1980), cert. denied, _____ U.S. _____, 101 S.Ct. 1773 (1981). We would urge that such communications must also be constitutionally protected, if accurate and not deceptive, lest commercial speech be permitted only when it is least likely to convey useful information to consumers.

The professional announcement card is a traditional, almost an ancient device of the legal profession. Such cards were allowed long before Bates. This case shows that the limitations placed on using such devices in prior

years, and eras, have to be reexamined in the light of Bates. Missouri's present DR 2-102(A)(2) underwent no substantial change after Bates; it appears in the 1969 Code of Professional Responsibility in all but identical form. Indeed, it remains philosophically unchanged from Canon 27 of the Canons of Professional Ethics, promulgated by the ABA in 1908, which said that:

> solicitation of business by circulars or advertisements, or by personal communications, or interviews, not warranted by personal relations, is unprofessional.

See also Drinker, Legal Ethics, 210 ff. (1953). If Bates stands for anything, it is that "personal relations" are no longer regarded as a necessary warrant for publicizing one's professional availability.

Count III of the information cannot stand.

II. The Published Advertising Counts

The remaining counts raise two issues that are common to all three, and one set of issues that are common to Counts I and II, but not to Count IV (whether appellant may be disciplined for failing to include a disclaimer of expertise). We turn first to the issues raised by all three of appellant's published advertisements.

A. Listing Admissions to Courts

All three advertisements contain the words, "Lic-

ensed in Missouri and Illinois", and "Admitted to Practice Before the United States Supreme Court." These words were charged by the Advisory Committee to violate DR 2-101(B) because, in each instance, "said advertisement lists the courts in which [appellant] . . . is admitted to practice."

The breadth of this charge is significant. It does not, as Judge Seiler's dissenting opinion suggests, 609 S.W.2d 415, at 416, allow a differentiation between appellant's mentioning his Illinois license, and his stating the fact that he is admitted to practice before this Court. By its terms, the information charges that listing the courts in which one is admitted to practice is professional misconduct. Neither the rule nor the Information draws a line between an admission that is obviously significant, and one that has little intrinsic meaning. Both are tarred with the same indiscriminate brush.

We need not, in this instance, look to Central Hudson Gas & Electric. We can stop at Friedman v. Rogers, 440 U.S. 1 (1979), and the simpler test laid down there for prophylactic prohibitions on an entire class of commercial speech. There, this Court concluded that the use of trade names by a regulated profession may be forbidden, because the conclusion that trade names are likely to mislead consumers is not unreasonable. One finds that reasoning wholly inapplicable to the fact that a lawyer is licensed to practice before a court. That fact is often, as in this case, intrinsicly useful to a potential consumer of legal services. One can conceive of few

items quite as useful, to a reader of the bi-state area directory in Count IV, as the fact that a lawyer practices on both sides of the Mississippi. It tells me, for example, that I can get one-stop service to go after both the used-car dealer in East St. Louis who sold me the lemon, and the charlatan in Clayton who failed to fix its brakes. Indeed, Missouri's version of the Code of Professional Responsibility gives specific authority for one form of admission to practice, that to patent practice pursuant to 35 U.S.C. §31. DR 2-105(A)(1) allows lawyers so admitted to call themselves "patent lawyers." One looks in vain for a rational differentiation between Patent Lawyers and Illinois Lawyers, or even between the authority to practice before one specialized agency in Washington, and the authority to practice before this Court. St. Louis area consumers would seem equally unlikely to have business before either.

Missouri's 1978 Code omits the standard paragraph of the ABA's Model Code, DR 2-101(B)(4), allowing publication of the "Date and place of admission to the bar of state and federal courts." The Missouri Court has now interpreted that omission as forbidding any mention of the fact that one is admitted to any court. In conjunction with DR 2-105(A)(1), then, Missouri's DR 2-101(B) violates the Equal Protection clause. The combination of the two rules has no rational basis.

It is true that, as the Chief Justice has recently remarked, admission to this Court signifies little more than that a lawyer has avoided disbarment for five years.

If so, one must ask whether the Court's failure to exercise its inherent authority to regulate its bar should be visited upon appellant. One must also ask whether the fact that a lawyer is already able to litigate before this Court, or any other Court, is not simply an objective fact which may be useful to some consumers, and which therefore should not be deemed misleading because it is not as useful as some other facts.

We would go so far as to hold that any objective, verifiable fact that is not deemed tainted with deception should be constitutionally protected commercial speech. Missouri's DR 2-101(A) prohibits "any form of public communication ... containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim." That language appears in that rule almost every state's disciplinary code. It should prove sufficient to prevent lawyers' advertising that, while not "false", fits one of the other adjectives.

That is not, however, Missouri's charge against appellant. To the Advisory Committee's Information, deception of the consumer is as irrelevant as the usefulness of the facts conveyed. The only question raised by the Information is whether Missouri may constitutionally prevent its citizens from knowing that some of its lawyers are also licensed to practice in the courts of other states, or in particular federal courts. In the context of Count IV, the question may even be whether Missouri may constitutionally allow its lawyers who are not admitted in Illinois to advertise in a bi-state directory in such a way

that consumers could be misled on that count, without allowing lawyers who can render service in both states to communicate that fact. The fact that no other state shares common borders with more states than Missouri (which has eight) gives ironic weight to the wrong-headedness of the rule. The fact that appellant is admitted in the neighboring state near his office makes the rule peculiarly a burden on interstate commerce, as to him; but it is manifestly a rule without reason in any event.

B. Using Unauthorized "Area of Practice" Designations

The second charge common to Counts I, II and IV is that each of Appellant's advertisements listed specific areas of practice not authorized by the Advisory Committee.

DR 2-101(B)(2) clearly delegated to the Advisory Committee the task of establishing "designations and definitions" for areas of practice. The Committee's list, Paragraph III of the Addendum, should be considered the Missouri Court's, as though it appeared in the Disciplinary Rule. As such, however, it fails to pass muster under Central Hudson, and also lacks the rational basis required by the Equal Protection Clause of the Fourteenth Amendment.

Both points are demonstrated by the Committee's own 1978 amendments, published in the Journal of the

Missouri Bar in January 1979. The Committee dropped "Criminal Law" as a "specific" area, because it was also a "general" area of practice under Paragraph III; it replaced "Tort Law" with "Negligence Law," and "Family Law" with "Domestic Relations Law." The changes demonstrate that the Addendum was slapped together without sufficient regard to the public interest to be served by area of practice listings, rather than the private interests of the profession being regulated. The terminology mandated by the Committee is lawyer's language, not language intended to assist a consumer of average intelligence and education. It thus fails the Central Hudson test at phase three; it does not "directly advance the governmental interest asserted," protecting the public from being misled, while providing access to useful information. The fourth question on the Central Hudson test, whether the requirement that only listed "designations" be used, without deviation, "is not more extensive than necessary," bespeaks its own answer.

There may be a place for such a state-imposed form of speech. As to lawyers' advertising, it might be appropriate for a state Court to authorize its State Bar to determine the headings to be used for a "Lawyers Guide" in the yellow pages, in which lawyers are listed under their areas of practice, and to promulgate such a list. Even so, the list should be explicitly made subject to amendments and additions, as Missouri's is not.

Lawyers' practices do not, however, fit into neatly labelled pigeonholes. Many lawyers develop peculiar

specialties that cut horizontally across any list of vertical categories. Some such specialties have ideological or political overtones, i.e. "Gay Rights" or "Sex Discrimination Law," raising another set of First Amendment concerns. See In re Primus, 436 U.S. 412 (1978). Others consist of pragmatic clusters of parts of other specialties, needed to provide full services to a particular trade or industry, such as handling the zoning, contract, leasing, and regulatory-board problems of restaurants, or of artists or sculptors.

We read Bates as holding that the availability of a legal service may be accurately advertised, and that, if the service is sufficiently routine to be offered at a price, that price may be advertised. A service less subject to simple calculations may be advertised at an hourly or daily rate, or, for that matter, without quoting any rate. Indeed, it seems an a fortiori matter that advertising without mentioning prices has the same constitutional protection as price advertising. Surely consumers with complex legal problems have the same right of access to information about legal services, as those with simple problems.

Appellant's advertisements use 24 area-of-practice designations that are more informative than the 23 authorized by the state bar. It would make more sense to discipline a lawyer using the Bar list, than one using his.

The state should not be able to proscribe any phrase that accurately describes a lawyer's practice. The consumer with a perfectly square legal problem needs to be

able to locate a perfectly square lawyer. The Sixth Amendment guarantees no less. The right to counsel of one's choice should not be shackled by cutting off access to the information needed to make that choice.

Counts I, II and IV must fail to the extent that they rest on appellant's failure to use only the specified designations authorized by the Addendum.

C. Omitting a Disclaimer of Certification

The third and last charge based on appellant's advertisements is that the first two advertisements (Counts I and II) failed to include the disclaimer of "certification of expertise" in "specific areas of practice," required by the Advisory Committee Addendum.

On this record, that requirement should be held unenforcible as an ex post facto law, or for lack of notice that such advertising might be unethical. See In re Ruffalo, 390 U.S. 544, 552 (1968) (White, J., concurring). Appellant seems to be penalized for having shot an apparently legal arrow into the air, only to have it declared unlawful before it returned to earth. Appellant lacked specific notice of the contents of the Addendum when he placed the advertisements, although he was apparently on notice of the new DR 2-101(A)(2). It stated that area-of-practice advertising would be permitted only to the extent that the Advisory Committee gave such permission, i.e., that only the Committee's "designations and definitions" could be used.

But that language gives no notice that the Committee might require a disclaimer. It does not appear to delegate such authority. See Fahey v. Mallonee, 332 U.S. 245 (1947); Currin v. Wallace, 306 U.S. 1 (1939). Appellant was evidently willing to challenge the Committee's judgment as to the sort of "designation" it may dictate, but acquiesced in its disclaimer requirement as soon as he knew of it. It smacks of sandbagging to discipline him for not guessing that the Committee would adopt a requirement ultra vires the power given it by the court.

Many of the issues raised by a state-mandated disclaimer are equally inherent in the question of whether the state may dictate a specific form of words for all descriptions of a lawyer's practice. The additional requirement of a disclaimer of certification has, however, a particularly insidious additional aspect. Because some Missouri lawyers have actually obtained "certification of expertise," the requirement imposes on them the choice of either lying or not advertising their areas of practice. They are certainly treated unequally by the Advisory Committee Addendum, which offers no alternative to the statement that one's listing an area of practice "does not indicate any certification of expertise therein."

The plain purpose of the requirement is to prevent consumers from learning that some Missouri lawyers are certified specialists. The only form of specialty certification that the Addendum allows one to mention is that "under procedures established by the Supreme Court of Missouri," or "pursuant to Supreme Court Rule." Para-

graph I. No such Rule or procedures exist. Thus Missouri only allows Missouri specialists to advertise the state's own specialty certificate, which does not exist, perhaps because it does not exist, although certification as specialists is available to Missouri lawyers from other sources.

Paragraph III of the Addendum, by requiring a disclaimer of certification, implies that certified lawyers are available in Missouri, could the consumer but find them.[2] A consumer who knew of the entire Addendum, including Paragraph I, would be certain that this was so, and would probably avoid lawyers who proclaimed their lack of certified expertise. Thus does the Committee, in Macbeth's words, speak the word of promise to our ear, and break it to our hope.

A litigant may object that a requirement of state law infringing on First Amendment rights is overly broad, although its breadth is not directly related to his circumstances. Schad v. Borough of Mount Ephraim, 101 S.Ct. 2176 (1981). Here the appellant is being disciplined for failing to disclaim certification, which the state refuses to provide him, and which the state also refuses to let him obtain (at least for advertising purposes) from anyone else. That is what is sometimes called Catch-22.

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[2] By analogy, the requirement that a prospectus for unregistered securities disclose that the securities are not registered with the SEC rests upon the fact that such registration is possible, and on the presumption that securities are not offered for sale without it.

The requirement may not be wholly meaningless, but it is far from meaningful. By requiring that what may not, for practical purposes, be advertised, must be disclaimed, The Missouri Bar engages in a highly irrational legal sleight of hand.

If the disclaimer requirement can constitutionally be applied to appellant, it should be struck down. In the context of this case, it appears unsupportable.

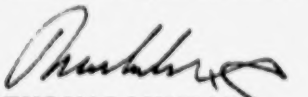
* * *

It thus appears that none of the three charges levelled against appellant's print media advertisements withstands the federal constitutional scrutiny to which the Supreme Court of Missouri declined to subject them. Counts I, II and IV of the Information, composed entirely of those charges, are accordingly as incapable as Count III, the professional announcement charge, of supporting even the private reprimand imposed on appellant by the Missouri Court. That leaves no constitutionally valid basis for the court's judgment.

CONCLUSION

For the foregoing reasons, amicus curiae The Association of Trial Lawyers of America respectfully submits that the judgment of the Supreme Court of Missouri should be reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 1981, true and correct copies of the foregoing Brief for Amicus Curiae, The Association of Trial Lawyers of America, were deposited in the United States Postal Service with first class postage prepaid and properly addressed to the following counsel for parties to this appeal:

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I also certify that all parties required to be served have been so served.

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Office - Supreme Court, U.S.
FILED
OCT 19 1981
ALEXANDER L. STEVAS,
CLERK

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BRIEF OF THE STATE BAR OF TEXAS AMICUS CURIAE

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Bowne of Houston, Inc. Printed in U.S.A.

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STATEMENT OF INTEREST

The State Bar of Texas is the mandatory association of attorneys at law licensed to practice in Texas. It is the body principally engaged in maintaining high standards of practice, ethics and responsibility in the Texas legal profession. It is the mechanism through which much of the intra-professional communication takes place, and it is also a major element in the relation between Texas attorneys and the public they serve.

Having these roles and responsibilities, the State Bar of Texas is vitally interested in the nature and scope of attorney advertising and in its proper role in the dissemination of information about attorneys and their services.

Since the decision of this Court in *Bates* v. *State Bar of Arizona,* 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed. 2d 810 (1977) the State Bar of Texas has sought diligently to perform its duty in the proper regulation of attorney advertising. It has however, enjoyed limited success due primarily to uncertainty as to the limits of constitutional constraints in the area. At the same time, substantial experience has been obtained with actual advertising efforts by attorneys. The State Bar of Texas finds this experience revealing as to the nature and extent of the public interest in receiving this type of information. The State Bar of Texas respectfully seeks to make the Court aware of its position on these matters as it relates to the case now being considered. Both parties have consented to the submission of this brief.

SUMMARY OF ARGUMENT

While engaged in the attempt to formulate guidelines and rules to properly govern advertising by attorneys, the State Bar of Texas has actively observed and experienced the advertising which has occurred in the wake of *Bates* v. *State Bar of Arizona,* 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed. 2d 810 (1977). This experience persuasively demonstrates that the nature and effect of attorney advertising in actual practice is not what it was perceived and anticipated by the Court as a predicate for the decision in *Bates.* Accordingly, the State Bar of Texas respectfully submits that the rule of *Bates* should be reexamined in a proper case.

On the other hand, the issues presented in the case now before the Court are particularly narrow when considered in the context of the constitutional concerns in the area of commercial speech. The factual base is simply not broad enough to allow complete development and sharp-

ening of the broader issues necessary to informed judicial consideration of the advertising question in general. Thus, if the Court should be disposed to write in a broad manner on the subject, the State Bar of Texas respectfully submits that the instant case is not the proper one in which to do so.

ARGUMENT

I.

In deciding the case of *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed. 2d 810 (1977) this Court gave birth to a major debate as to the extent to which a lawyer may make himself known through public advertising. *Bates*, of course, enunicated the rule that the First Amendment protects publication in a newspaper of a truthful advertisement concerning the availability and terms of routine legal services, such as an uncontested divorce, a simple adoption, an uncontested personal bankruptcy, a change of name and the like. The majority of the Court perceived that legal services of that type are analogous to the prescription drugs made the subject of *Virginia Pharmacy Board* v. *Virginia Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) and concluded that the result in *Bates* should flow *a fortiori*. *Bates, supra*, at p. 365. The rationale appears principally to have been that advertising of routine legal services of the kind listed above, like advertising of the price of prescription drugs, is readily and practicably susceptible to independent verification and thus not so conducive of deception as to justify its proscription as against First Amendment concerns.

At the same time, it was certainly recognized that the holding would precipitate substantial dialogue as to the situs of demarcation between the right to know and the duty not to mislead. Accordingly, the result in *Bates* was

expressly limited to its facts and the Court reserved for another day its consideration of such other concerns as mention of the quality of the services being advertised, in-person solicitation of clients, supplementation by warning or disclaimer and advertising through the electronic media. *Bates, supra* at p. 383-4. More importantly, because of the "'commonsense differences' between commercial speech and other varieties", the Court expressly declined to apply the First Amendment overbreadth doctrine to professional advertising cases. *Bates, supra,* at p. 379-381.

The debate anticipated in *Bates* is taking place. Among the participants are the judicial branches of state governments, as in Missouri, and professional associations like the State Bar of Texas which are charged by law with the responsibility to regulate and to discipline their members. A wide variety of attempts has been made by these Courts and associations, and others, in the subsequent years to formulate rules and guidelines governing professional advertising that are at once fair and reasonable, consistent with the presently undefined constraints of the First Amendment and capable of efficient administration and equitable enforcement. See, eq. *American Bar Association, Model Code of Professional Responsibility* (1978); *In re Petition for Rule of Court, Etc.* 564 S.W. 2d 638 (Tenn. 1978); Mo. Sup. Ct. Rule 4, DR-2-101-102; *The Fla. Bar re Amendment to Fla. Bar Code,* 380 So. 2d 435 (Fla. 1980). The task has naturally been difficult due to a great deal of uncertainty as to the constitutional effect of broad range practical application of specific rules in the wake of what is a revolutionary change in the ways attorneys have become known to their clients for centuries. There have, however, been a limited number of beacons along the way to suggest changes in course through these uncharted shoals, such as *In re Primus,* 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed. 2d 412 (1978); *Ohralik* v. *Ohio State Bar Ass'n,*

436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978); *Koffler* v. *Joint Bar Ass'n*, 412 N.E.2d 927 (C.A.N.Y. 1980); and *Kentucky State Bar* v. *Stuart*, 568 S.W.2d 933 (Ky. 1978).

In the meantime, some attorneys have begun to advertise their services, and one finds utilization of almost every media available. Attached hereto as an appendix are certain examples taken from the telephone directories and newspapers of some of the major metropolitan areas in Texas. These examples represent but a small number of the ads that are currently being published in only two media, but are intended as representative of that which is taking place on a much broader scale. These examples readily demonstrate several significant features of the nature and consequences of attorney advertising.

It is apparent that the advertisements currently being published are in many cases substantially different from that which was anticipated in *Bates* and its progeny. One finds repeated use of trade names, logos and marks which are not in any meaningful way connected with the identities or skills of the legal practitioners, self-laudatory slogans, listings of fields of practice so numerous and comprehensive as to suggest question of competence or expertise in all, strong suggestions of the results attainable, and indeed offers of free samples of legal advice by recorded telephone message. To be sure, matters such as these might well be proper subjects for the utilization of the State's regulatory and disciplinary power, and the State Bar of Texas is actively seeking to perform its lawful role in that connection to the fullest extent possible.

On the other hand, the general substance of the messages illustrates the manner in which the First Amendment interest in the free flow of information is being served. It seems valid to assume that in constructing an advertisement, the practitioner will select that information most

useful to the populace he hopes to serve, so that his advertisement will elicit the greatest response and will not be wasted. If that be true, it is significant to note that only the small minority of advertisements available for review are directed toward the availability and terms of routine legal services of the type contemplated in *Bates*. The services being advertised are much broader and less finite in scope and one observes very little commitment to or even representation of definitive fees for such services. This strongly suggests that the community interest in the free flow of information of the type considered in *Bates* is indeed not as strong as it was thought to be and does not weigh as heavily in the constitutional balance.

Moreover, the substantive emphasis of the advertisements reaffirms that attorneys do not publicize and really do not deal in products the advertisement of which is susceptible of even reasonably objective verification. It is of course true that as a matter of economic survival attorneys often utilize standardized forms and office procedures in an effort to minimize duplication in handling an uncontested divorce, a simple adoption, an uncontested personal bankruptcy, a change of name or other service which could be referred to as routine. However, the careful and competent attorney utilizes such devices merely as tools to construct the product to be marketed, and not as the product itself. A lawyer's expertise does not lie in the mere brokering of forms as a matter of routine. Indeed, lawyers are trained from the beginning to search for, to analyze and thus to address and resolve those problems of his client which may not be shared with others in similar situations. It is this ability, competence and judgment for which an attorney is employed, and it is the reason why attorneys, rather than clerical personnel, are called upon to handle even the routine matters. On the other hand, it is also the reason why an attorney cannot in good conscience

advertise a fixed fee in advance when he really can have no accurate appreciation for the work he will be required to do. Not only is the public constrained by necessity to rely upon attorneys to perform these non-duplicable functions, it has long been recognized as the attorney's duty to do so and he is subject to professional discipline and even civil liability if he does not.

It is also true that as suggested in *Bates*, the bar association should and does implement exhaustive means to identify and to discipline those of its members who do not perform such services competently and professionally. However, unlike the consumer of tangible commercial products such as cosmetics, prescription drugs or even eye glasses, who is in most cases easily able to judge the quality of his purchase by the result obtained or by comparison with other products, the consumer of a routine legal service normally has need of such service only once or twice in a lifetime and is consequently unable to determine its quality by comparison. More importantly, a result oriented qualitative analysis is likely never obtained, at least in the case of a will, until after the consumer had died. Thus, to the extent quality enforcement mechanisms are dependent upon consumer reaction, the mechanisms are hampered.

The point is that notwithstanding all of the regulatory force which could be brought to bear upon an attorney, it is simply not possible for him to perform the true function that he is expected and generally perceived to perform and at the same time truthfully state in an advertisement that it can practicably be done for a stated fee in all or even most cases. In other words, advertisement even of the availability and terms of routine legal services is misleading. In most cases, the client is baited into the office by the statement of a competitive fee only to find that if he is to be properly served by an attorney who does his

duty, it may cost him much more. There is a significant and material distinction between the science of prescription drug preparation and the art of the practice of law, and a conclusion with respect to the former does not compel a similar result as to the latter. Moreover, the experience of the public and the bar since *Bates* was decided rather graphically demonstrates the converse of the *Bates* conclusion that only the routine services lend themselves to advertising. The state has a compelling interest in the maintenance of the clean promulgation of information by attorneys to the public, which weighs heavily when subjected to the limited measure of protection available to commercial speech, commensurate with its subordinate position in the scale of First Amendment values. *Ohralik, supra,* at p. 456. Accordingly, the State Bar of Texas respectfully and earnestly believes that the decision in *Bates* should be reexamined in a proper case.

II.

The questions now before the Court, however, are those presented specifically in the case of R_____M. J_____, and from the opinion of the Court below as well as the arguments of the parties, it does not appear that the breadth of the issues is sufficient to undergird enunciation of a comprehensive statement in the area of commercial speech.

It has long been resolved and settled that statutory law cannot be called into question as repugnant to the Constitution, except as directly related to an adjudication of the legal rights of litigants in actual controversies. *Baker* v. *Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). While generally expressed as a matter of standing, the reason for the rule has also been applied by this Court in

its rejection of the First Amendment overbreadth doctrine in professional advertising cases. *Bates, supra,* at p. 379-381. *Bates, Ohralik* and *Primus* all follow this teaching in addressing themselves solely to the narrow issues presented by their facts rather than embarking upon more general pronouncements as to the propriety of regulation of advertising.

It is certainly clear that both parties to the instant ligation have submitted their positions in a commendable and good faith effort to bring about a decision. Nevertheless, when compared to some of the professional advertising which is currently taking place elsewhere, as illustrated in the appendix, this test case simply does not exhibit a factual base broad enough to allow complete development and sharpening of the issues necessary to informed judicial consideration of the advertising question in general. Indeed, it seems ill advised for this Court to engage for example, in deciding the semantics of fields of legal practice, particularly when issue really centers on matters of opinion more effectively resolved in the process of promulgation of specific rules by the states. Accordingly, although the State Bar of Texas asserts that *Bates* should be reconsidered in a proper case, it also respectfully submits that if the Court is inclined to write broadly on the subject, the instant case is not the proper one in which to do so.

Respectfully submitted,

By Jerry L. Zunker

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the foregoing brief have been served upon the parties to this appeal by first class air-mail and postage prepaid, properly wrapped and addressed to their counsel of record on this 16TH day of October 1981.

Jerry L. Zunker

JERRY L. ZUNKER

APPENDIX

DEBT Relief
Ch-13 Wage Earner or Ch-7 Discharge
or Informal Voluntary Re-Arrangement
STOP HARASSMENT FORECLOSURES
KEEP YOUR SANITY & JOB YOUR HOME, CARS & FURN
REDUCE PAYMENTS
DISCHARGE DEBTS
START FRESH
450. TERMS
ALL PERSONAL (SINGLE or COUPLE)
+ 60. Court Fee
= your TOTAL Cost: $10.
(Why pay more?)
FREE INITITIAL INTERVIEW
FREE INFORMATION
24 HRS - 7 DAYS
223-1343
HEAR MR. GILL'S 5-MINUTE TAPED DISCUSSION
on Debt Relief.
Your options.
HOW it works.
How YOU can
get it.
223-1343
24 HRS - 7 DAYS
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Since 1958
3 Locations
NORTH LOOP
DOWNTOWN
GULF FWY
HIRE HALLIE GILL
M-F 9-6
SAT 10-2
TUE 9-8
24 HRS CALL
223-1343
22 years experience ... USE it

22 Years experience at no extra cost

- DIVORCE
- DWI
- DEBT RELIEF (BANKRUPTCY / WAGE EARNER)
- CHILD SUPPORT ENFORCEMENT
- THEFT, CRIMINAL
- INJURY & COMP.
- LICENSE SUSP.

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PROBATE

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WILLS, PROBATE	223-1327
INJURY, WRKR. COMP.	223-1325
D.W.I. LICENSE SUSP.	223-1308
THEFT, CRIMINAL	223-2651
CHILD SUPPORT	223-0373

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- ★ Personal Injury
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- ★ Workmen's Compensation
- ★ Medical Malpractice
- ★ Wills & Probate
- ★ Review of Documents
- ★ Real Estate
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- ★ Incorporations
- ★ Partnerships
- ★ Contracts/Leases
- ★ DWI & Criminal Defense

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- Bankruptcy
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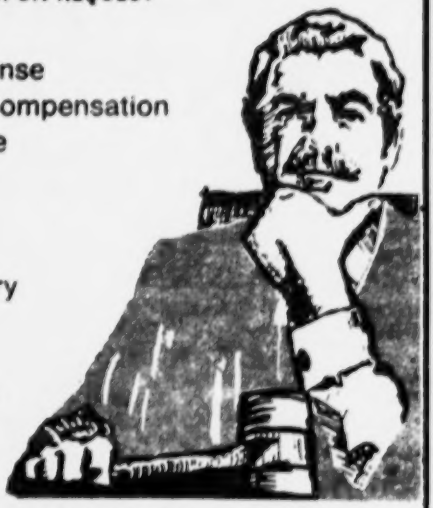

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- ★ Workmen's Compensation
- ★ Medical Malpractice
- ★ Wills & Probate
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- ★ Real Estate
- ★ Business Law
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- ★ INJURIES
- ★ SEAMANS CASES
- ★ DIVORCES
- ★ WORKERS COMP.
- ★ WILLS & TRUSTS
- ★ ADOPTIONS
- ★ NAME CHANGES
- ★ CORPORATIONS
- ★ RAILROAD
- ★ LONG SHOREMAN
- ★ JUVENILE
- ★ IMMIGRATION
- ★ AIR DISASTER CASES
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